



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 26, 2007

Ms. Dorothy Brooks
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2007-15395

Dear Ms. Brooks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 295831.

The Rockwall Police Department (the "department") received a request for a list of all calls answered, all arrests or juvenile referrals, and all incident reports pertaining to a specified address. You state the information responsive to the list for calls answered to the address has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in

an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information in report number 2006-00016130 pertains to an investigation of an injury to a child. Thus, we conclude this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of Family Code, ch. 261). You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that report number 2006-00016130 is confidential pursuant to section 261.201 of the Family Code, and the department must withhold this report under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Report number 2007-00010364 pertains to a report of juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). It does not appear that any of the exceptions in section 58.007 apply; therefore, report number 2007-00010364 is confidential under section 58.007 and must be withheld under section 552.101 of the Government Code.¹

¹We note, however, that if the requestor is the representative of a parent of the juvenile suspect listed on report number 2007-00010364, the requestor has a right of access to the report. Act of May 29, 1995, 74th Leg., R.S., ch. 262, 1995 Tex. Gen. Laws 2517, 2552-53, *amended by* Act of May 28, 2007, 80th Leg., R.S., ch. 879, § 1, 2007 Tex. Sess. Law Serv.1896. (stating that “law enforcement records and files concerning a child may be inspected by . . . the child’s parent or guardian.”)

Next, the department asserts that the remaining incident report is excepted under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Incident report number 2004-00004197 pertains to an investigation that led to the filing of multiple charges against the defendant. You state that some of the charges did not result in a conviction or deferred adjudication. You also state, however, that the defendant was charged with interfering with an emergency call, and this charge resulted in the defendant receiving deferred adjudication. Thus, because the incident report pertains to a criminal investigation that concluded in a result of deferred adjudication, we find that section 552.108(a)(2) is not applicable. Therefore, the department may not withhold report under section 552.108(a)(2).

This incident report, however, contains motor vehicle information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked in incident report number 2004-00004197 under section 552.130.

In summary, the department must withhold the following under section 552.101 of the Government Code: (1) incident report number 2006-00016130 in conjunction with section 261.201 of the Family Code; and (2) incident report number 2007-00010364 in conjunction with section 58.007(c) of the Family Code. The Texas motor vehicle record information we have marked in incident report number 2004-00004197 must be withheld under section 552.130 of the Government Code. The remaining information must be released to the requestor.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

²We note that the department states it will redact the social security numbers contained in incident report 2004-00004197. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

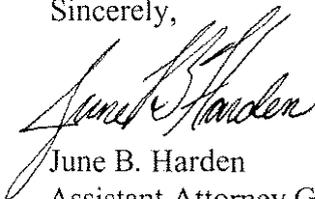
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/mcf

Ref: ID# 295831

Enc. Submitted documents

c: Mr. Keith P. Wheeler
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(w/o enclosures)