



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2008

Ms. Kristi Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2008-08620

Dear Ms. Ashberry:

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# 313753.

The Rockwall Police Department (the "department") received a request for all police reports pertaining to two named individuals. You claim that the submitted incident reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have submitted incident report number 2007-00007764, which does not pertain to the named individuals in the request. Accordingly, this information is not responsive to the request. Information that is not responsive to this request need not be released. Moreover, we do not address such information in this ruling.

Next, 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, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party, and not as a suspect or offender. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You claim the submitted police incident report number 2007-00016787 is confidential under section 58.007 because it involves juvenile law enforcement records. After reviewing the report, however, we find that this information does not involve a juvenile as a suspect or offender because the listed suspect is seventeen years old. Therefore, we conclude that report number 2007-00016787 is not confidential under section 58.007 and may not be withheld under section 552.101 on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982)*. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See Open Records Decisions Nos. 393 (1983), 339 (1982)*; *see also Open Records Decision No. 440 (1986)* (detailed descriptions of serious sexual offenses must be withheld). Although the alleged victim, who is a minor, is identified only by a pseudonym, because of the nature of the request in this instance, report number 2007-00016787 contains information that tends to identify the alleged victim and is inextricably intertwined with the other information in the report. Thus, withholding only the identifying information from the requestor would not preserve the alleged victim's common-law right to privacy. Accordingly, the entire report is generally subject to common-law privacy. However, the request indicates that the requestor may be a parent of the alleged minor victim. If the requestor is a parent of the alleged minor victim, the requestor has a special right of access to information that would ordinarily be withheld to protect the minor's

common-law privacy. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Accordingly, if the requestor is a parent of the alleged minor victim, none of report number 2007-00016787 may be withheld from the requestor under section 552.101 in conjunction with common-law privacy. If the requestor is not a parent of the alleged minor victim, report number 2007-00016787 must be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

We note that report number 2007-00016787 contains a Texas driver's license number that does not belong to the minor. The driver's license number is excepted from disclosure under section 552.130 of the Government Code, which excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state.¹ Gov't Code § 552.130. Therefore, if the requestor is the parent of the alleged minor victim, the department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not a parent of the alleged minor victim, report number 2007-00016787 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is a parent of the alleged minor victim, no part of report number 2007-00016787 may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy, but the Texas driver's license number we have marked must be withheld under section 552.130 of the Government Code.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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

² If the department receives a future request for this information from an individual other than this requestor, the department should again seek our decision.

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 challenge 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 313753

Enc. Submitted documents