



February 17, 2000

Mr. Kevin E. Oliver  
Cooper & Scully, P.C.  
900 Jackson Street, Suite 100  
Dallas, Texas 75202

OR2000-0602

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132527.

The City of Coppell (the “city”), which you represent, received a request for information pertaining to three incident reports and a list of all other agencies that have received information regarding the incident reports. You claim that the requested information is excepted from disclosure under sections 58.007 and 261.201 of the Family Code, as encompassed by section 552.101 of the Government Code, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the responsive information.<sup>1</sup>

First, we address incident report numbers 99-282204 and 99-20258, both of which you claim are confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Accordingly, section 552.101 encompasses confidentiality provisions such as Family Code section 261.201(a). The relevant language of that statute reads as follows:

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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). Incident report numbers 99-28204 and 99-20258 relate to allegations of child abuse. Therefore, these incident reports fall within the scope of section 261.201 of the Family Code. The information regarding these two incident reports is therefore confidential pursuant to section 261.201 of the Family Code as encompassed by section 552.101 of the Government Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).<sup>3</sup> Accordingly, the city must withhold incident report numbers 99-28204 and 99-20258.

Next, we turn to incident report number 99-12291. You claim that this report is also confidential under section 261.201 as encompassed by section 552.101. However, this incident report does not concern an allegation of child abuse, and consequently, it does not fall under section 261.201. You also contend that it is confidential under section 58.007 of the Family Code as encompassed by section 552.101. As explained above, section 552.101 encompasses confidentiality provisions such as section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03. Incident report number 99-12291 does not involve a juvenile engaging in delinquent conduct or conduct indicating a need for supervision. Therefore, section 58.007 of the Family Code, as encompassed by section 552.101 of the Government Code, is inapplicable to incident report number 99-12291.

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<sup>2</sup>We assume that the city has not adopted any rules that would permit access to the requested information.

<sup>3</sup>We note, however, that if the Texas Department of Protective and Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(f).

You also contend that incident report 99-12291 is excepted under section 552.108(a)(1). Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). You argue that release of incident report number 99-12291 would “hamper the investigation of these charges . . . .” While you have not stated with clarity whether this incident report relates to an ongoing criminal case, the report itself indicates that the city issued a citation for class C assault and forwarded the matter to city court. Therefore, it appears that report number 99-12291 pertains to an ongoing criminal case. Accordingly, we find that the report is subject to section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the report. Therefore, with the exception of the basic front page offense information, the city may withhold report number 99-12291 under section 552.108(a)(1). Although section 552.108 authorizes the city to withhold this information from disclosure, the city may choose to release all or part of the information that is not otherwise confidential by law.<sup>4</sup> See Gov’t Code § 552.007.

In conclusion, the city must withhold incident report numbers 99-28204 and 99-20258 under section 261.201 of the Family Code as encompassed by section 552.101 of the Government Code. The city may withhold report number 99-12291 under section 552.108(a)(1), however, the city must release the front page information in this report under section 552.108(c).

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

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<sup>4</sup>We note that the report contains a Texas driver’s license which is confidential under section 552.130 of the Government Code, and a social security number which may be confidential under section 552.101 in conjunction with federal law.

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 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 132527

Encl: Submitted documents

cc: Mr. John Garcia  
311 Garden Grove Way  
Coppell, Texas 75019-2676  
(w/o enclosures)