Office of the Attorney General · State of Texas
John Cornyn

December 22, 2000

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2000-4831

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142553.

The Garland Police Department (the "department") received a request for a copy of the case report relating to an incident involving the requestor's daughter. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. We have considered the exception 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." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. In this instance, the person identified as the suspect in the submitted report was eight years of age on the date of the alleged offense. Accordingly, the suspect was not a "child" for the purposes of title 3 of the Family Code, which includes section 58.007. *See* Fam. Code §§ 51.02(2) (providing that in title 3 of the Family Code, "child" means a person who is ten years of age or older and under seventeen years of age), 58.007(c) (providing that "law enforcement records and files *concerning a child* . . . may not be disclosed to the public") (emphasis added). Thus, the submitted report is not a law enforcement record or file "concerning a child" that is within the ambit of section 58.007. Therefore, it may not be withheld from disclosure under that provision of the Family Code in conjunction with section 552.101 of the Government Code.

As the department has not raised any other exception to the disclosure of the report, it must be released to the requestor.

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 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).

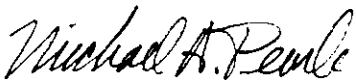
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 General Services Commission 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 142553

Encl. Submitted documents

cc: Ms. Keesha Mack
1857 West Walnut #C
Garland, Texas 75042
(w/o enclosures)