



January 19, 2001

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2001-0204

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143347.

The City of Allen Police Department (the "department"), which you represent, received a request for any and all records relating to incidents occurring at three specific addresses involving two named individuals during the years 1999 and 2000. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that a portion of the requested information is excepted from disclosure based on section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. 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 section 58.007 of the Family Code. Section 58.007 makes certain juvenile law enforcement records confidential. Section 51.04(a) of the Family Code states that the Juvenile Justice Code, Title 3 of the Family Code, "covers the proceedings in all cases involving the delinquent conduct or conduct indicating the need for supervision engaged in by a person who was a child within the meaning of [Title 3] at the time he engaged in the conduct." Thus, section 58.007 deems confidential law enforcement records from all cases involving a child engaging in delinquent conduct or conduct indicating the need for supervision. Juvenile law enforcement records

relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads 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. . . .

You inform us that reports with service numbers 99010679, 99054230, and 00043389 involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, service numbers 99010679, 99054230, and 00043389 are confidential pursuant to section 58.007(c) of the Family Code. You must withhold these reports in their entirety under section 552.101 of the Government Code. We also conclude that the report with service number 00001917 is confidential under section 58.007(c), and it, too, must be withheld from disclosure under section 552.101.

We also believe one of the submitted service reports is covered by section 261.201(a) of the Family Code. This statute 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.

Because service number 00021746 relates to an allegation of child abuse, the documents are within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, service number 00021746 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this

report from disclosure under section 552.101 of the Government Code.¹ Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation of child abuse, the department must not release front page offense report information in cases of alleged child abuse.

You also assert that a portion of the requested information is excepted from disclosure under common law privacy. As noted, section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

We note you have submitted a report with service number 00039202. Upon review of service number 00039202, we conclude that a portion of this report is excepted under common law privacy, and we have marked this information. The remainder of this report must be released to the requestor. However, we note that section 552.023 of the Government Code gives a person or a person’s authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person’s privacy interest. It appears that the requestor may be the authorized representative of the individual whose privacy interests are at issue in service number 00039202. Therefore, if you determine that the requestor is in fact the authorized representative of this individual, you must release the marked information to the requestor.

We also note that you have submitted a divorce decree, but you make no arguments for withholding this information. Therefore, you must release the divorce decree to the requestor. *See* Gov’t Code §§ 552.301, 552.302. *See also* Gov’t Code § 552.023.

To summarize, service numbers 99010679, 99054230, 00043389, and 00001917 are confidential pursuant to section 58.007(c) of the Family Code, and must be withheld from disclosure under section 552.101 of the Government Code. Service number 00021746 is confidential under section 261.201 of the Family Code, and must therefore be withheld under section 552.101. Service number 00039202 must be released to the requestor, except for a

¹We note, however, that if the Texas Department of 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(g).

portion of information that we have marked to be withheld under section 552.101 in conjunction with common law privacy, unless the requestor is the authorized representative of the individual whose privacy interest is at issue. If he is the authorized representative, the marked information must be released to him as well. Finally, the submitted divorce decree 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,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive style with a large, prominent initial "M".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 143347

Encl. Submitted documents

cc: Mr. Timothy Kolb
P.O. Box 45
Wills Point, Texas 75169
(w/o enclosures)