



June 25, 2001

Captain David Pruitt
City of Frisco Police Department
8750 McKinney Road, Suite 500
Frisco, Texas 75034

OR2001-2694

Dear Captain Pruitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148685.

The City of Frisco Police Department (the "department") received a request for all information pertaining to responses to two specific addresses and involving certain named individuals. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

First, you claim that report number 00-32216 is excepted under section 552.101 in conjunction with section 261.201(a) of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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

¹You do not raise any exceptions to disclosure for incident report 99-44269 or 00-031765. However, this office has reviewed those documents to determine if they contain information that is confidential by law. *See generally* Open Records Decision Nos. 344 (1982), 325 (1982) (providing that Attorney General is not authorized to raise exceptions on behalf of governmental body, except for confidentiality provisions).

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.

We agree that police report number 00-32216 relates to an allegation of child abuse and is 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, police report number 00-32216 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute). Accordingly, the city must withhold this report in its entirety under section 552.101 of the Government Code as information made confidential by law.²

Next, you claim that reports number 99-0645 and 00-32066 are excepted from disclosure under section 552.108(a)(2). Section 552.108, the "law enforcement exception," provides in relevant part as follows:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in 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. You do not adequately explain, nor is it clear from reviewing the submitted reports, that these cases concluded in a result other than conviction or deferred adjudication. Because you have failed to adequately explain the applicability of section 552.108(a)(2), you may not withhold report number 99-0645 or 00-32066 under that exception.

²We 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(g).

You also claim that portions of report number 99-0645 are protected from disclosure under section 552.101 in conjunction with common law and constitutional 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). Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The scope of information protected under constitutional privacy is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After careful review, we have marked the portion of report number 99-0645 that is protected by a right to privacy and must, therefore, be withheld under section 552.101 of the Government Code.

We note, however, that the submitted documents contain information that is confidential by law. The Seventy-seventh Legislature recently added section 552.136 to the Public Information Act,³ which makes credit card numbers confidential. Senate Bill 694 was passed on May 14, 2001, became effective when it was signed by the Governor on May 26, 2001, and provides, in relevant part, as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

³The Legislature also enacted two other bills that added a section 552.136 to the Public Information Act. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Act. As of the date of this letter ruling, all three of these bills await the Governor's signature.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). Thus, you must withhold the credit card numbers that appear in report number 00-32066 under section 552.136 of the Government Code.

We also note that section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, we have marked the driver's license information that must be withheld from disclosure.

Finally, we note that the submitted documents contain social security numbers which may be excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). We note that a social security number may only be withheld under this federal provision if the number *was obtained or is maintained by the governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994). You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, the department should ensure that these numbers were not obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, you must withhold report number 00-32216 under section 552.101 in conjunction with section 261.201 of the Family Code. You must also withhold the bracketed information in report number 99-0645 under section 552.101 in conjunction with a right to privacy. The credit card numbers in report number 00-32066 must be withheld from disclosure under section 552.136 of the Government Code. Finally, we have marked the driver's license numbers that must be withheld under section 552.130. The remaining information, however, must be released.

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).

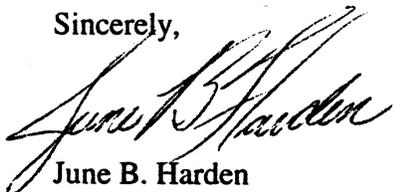
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBHSPA/seg

Ref: ID# 148685

Enc. Submitted documents

c: Ms. Theresa G. Sanchez
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McKinney, Texas 75069
(w/o enclosures)