



December 31, 2001

Mr. Terrence S. Welch
Attorney for the City of Flower Mound
Brown & Hofmeister
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2001-6132

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156710.

The Town of Flower Mound (the "town"), which you represent, received a written request for the "full report produced by Dallas-based Parker-Jones Inc. that was requested by the city as a result of concerns raised by" a town resident.¹ You contend that the requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, and 552.111 of the Government Code.

We note at the outset that the requested information consists of a completed report specifically made public under section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108.

¹You inform us that the requestor has withdrawn her request for Exhibits 1, 2, and 3 to the report.

Gov't Code § 552.022(a)(1). The requested report is therefore expressly made public under section 552.022 except to the extent that the report is made confidential by other law or may otherwise be withheld from the public pursuant to section 552.108 of the Government Code. Although you argue that portions of the report are excepted under sections 552.103 and 552.111 of the Government Code, these provisions are discretionary exceptions and therefore are not "other law" for purposes of section 552.022. *See, e.g.,* Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive section 552.103), 470 (1987) (governmental body may waive section 3(a)(11)). Accordingly, we do not discuss the applicability of these two exceptions to the records at issue.

On the other hand, because you argue that some of the information at issue comes under the protection of sections 552.101 and 552.108 of the Government Code, we will discuss the extent to which these two exception apply to the requested report. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that certain information contained in the report is made confidential under section 58.007 of the Family Code because the information pertains to the sexual assault of a child. In Open Records Decision No. 628 (1994), this office discussed the applicability of the statutory predecessor to section 58.007(c) of the Family Code to records involving child crime victims:

This section applies only to juvenile offenders and not to juvenile crime victims. Section 51.14 [of the Family Code] provides, inter alia, that where a particular matter is within the jurisdiction of a juvenile court, the juvenile offender's records shall be confidential. [Citation omitted.] These provisions have no bearing on records relating to juvenile crime victims; they clearly apply only to records concerning juvenile offenders. Although the provisions express concern for the privacy of juvenile offenders, juvenile crime victims have thus far received no similar explicit statutory protection.

Open Records Decision No. 628 at 6 (1994). Because the records referred to here pertain to a juvenile crime victim, and not to a juvenile offender, section 58.007 of the Family Code does not apply to these records.

We note, however, that a portion of the information in the report is confidential under section 58.007. Section 58.007 of the Family Code governs law enforcement records and files that relate to juvenile offenders. This section provides in part:

(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) encompasses records of juvenile conduct that occurred on or after September 1, 1997.² The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred.³ We have marked the information in the report that you must withhold under section 58.007(c) of the Family Code.

We also note that some of the records attached as exhibits to the report are made confidential under section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

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.

After reviewing the information at issue, we conclude that Exhibits 9, 10, 11, and 15 come within the scope of section 261.201 of the Family Code. You have not indicated that the town has adopted a rule that governs the release of this type of information. Therefore, we

²See Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996).

³See Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code).

assume that no such regulation exists. Given that assumption, Exhibits 9, 10, 11, and 15 must be withheld in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ See Open Records Decision No. 440 at 2 (1986) (predecessor statute). *But see* Fam. Code § 261.201(b) (provision for court ordered access), (f) (limited right of access to records held by Department of Protective and Regulatory Services).

Section 552.101 of the Government Code also protects information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Clearly, information pertaining to a sexual assault implicates the privacy interests of the assault victim. See, e.g., Open Records Decision No. 339 (1982) (identity of sexual assault victim protected by common law privacy). We have marked the information contained in the text of the report that the town must withhold pursuant to section 552.101 in conjunction with common-law privacy.

Finally, you contend that portions of the requested report are excepted from public disclosure pursuant to section 552.108(a)(2) of the Government Code, which excepts from required public disclosure “[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . 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.” After reviewing the records at issue, it is apparent to this office that the text of the requested report was created for purposes similar to those of an internal affairs investigation. Because internal affairs investigations are administrative, as opposed to criminal, in nature, section 552.108(a)(2) is generally inapplicable to such investigations, which cannot result in conviction or deferred adjudication unless the IAD investigation is conducted in conjunction with a criminal investigation. See also *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable were no criminal investigation resulted). Because the remaining information contained in the text of the requested report was not created in conjunction with a criminal investigation, the town may not withhold any portion of the text pursuant to section 552.108(a)(2).

On the other hand, Exhibits 4, 5, 6, 7, 8, and 14 were each created during the course of criminal investigations that did not result in a conviction or deferred adjudication. We therefore conclude that section 552.108(a)(2) applies to these documents. Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). We therefore conclude that

⁴Because we resolve this aspect of your request under section 261.201 of the Family Code, we do not address the applicability of section 552.108 of the Government Code to these particular records.

the town must release all basic information regarding each of the offenses alleged in these documents, including a *detailed* description of the offenses, in accordance with *Houston Chronicle Publishing Company 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). In this instance, Exhibits 4, 5, 8, and 14 contain only basic dispatch information, and thus must be released in their entirety. The town must also release any basic information contained in Exhibit 6; however, we conclude that Exhibit 7 may be withheld in its entirety pursuant to section 552.108(a)(2).

In summary, the town must withhold Exhibits 9, 10, 11, and 15 in their entirety pursuant to section 261.201 of the Family Code. The town must also withhold under section 552.101 in conjunction with the common-law right of privacy and section 58.007 of the Family Code the information we have marked in the text of the report. The town is authorized to withhold Exhibit 7 pursuant to section 552.108(a)(2), as well as those portions of Exhibit 6 that do not consist of "basic information" made public under section 552.108(c). The town must release all of the remaining information contained in the report.

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); *Tex. 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 Texas Building and Procurement 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, appearing to read "Kevin J. White", is written over a horizontal line.

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/RWP/sdk

Ref: ID# 156710

Enc: Marked documents

c: Ms. Rachel Horton
The Dallas Morning News
131 W. Main Street
Lewisville, Texas 75067
(w/o enclosures)