



November 15, 2002

Mr. Darrel G-M Noga
Roberts & Smaby
1717 Main Street, Suite 3000
Dallas, Texas 75201

OR2002-6533

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172291.

The City of Coppell (the "city"), which you represent, received a request for "any domestic/violence reports or any offense reports" regarding a named individual. You state that you have released some of the requested information to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing the information responsive to the request for domestic violence reports. 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 information protected by other statutes. Section 261.201 of the Family Code reads in part 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe that some of the requested information consists of reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, group exhibits 2B, 2D, and 2E are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, you must not release this information to the requestor.¹ However, we find that section 261.201 is inapplicable to group exhibit 2C. Consequently, the city may not withhold group exhibit 2C based on section 552.101 in conjunction with section 261.201 of the Family Code.

We turn now to your arguments regarding the remaining information. You claim that this information is excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to juvenile conduct that occurred on or after September 1, 1997 are confidential under section 58.007. However, section 58.007(c) of the Family Code pertains only to juvenile offenders. Because the city has not demonstrated that the requested information concerns juvenile conduct, section 58.007(c) does not apply to the submitted information.

You next argue that the remaining information should not be released because the information is highly intimate and embarrassing and of no legitimate interest to the public.² This office has previously concluded that information concerning domestic violence generally does not come within the scope of common-law privacy. Open Records Decision No. 611 (1992) (“An assault by one family member on another is a crime, not a family matter

¹We note that if the investigation has been referred to the Department of Protective and Regulatory Services (“DPRS”), the requestor, who is a parent, may be entitled to access DPRS’s records. Section 261.201(g) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Fam. Code § 261.201(g).

²Section 552.101 also encompasses common-law privacy.

normally considered private.”). After careful review of your arguments and the submitted information, we find that the information is not protected from disclosure based on the common-law right of privacy. Accordingly, you may not withhold any of the submitted information based on section 552.101 in conjunction with the common-law right of privacy.

Next, you argue that portions of the remaining information are excepted under 552.117. Section 552.117(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. In this case, however, the section 552.117 information appears in law enforcement records pertaining to the criminal investigation of a suspect. The named individual, who also happens to be listed as an employee of a governmental body, is identified as the victim. The fact that the victim also happens to be employed by the governmental body does not mean that the personal information in the criminal investigation records is contained therein in the individual's capacity as a government employee. Rather, the references to the individual's personal information in the records of the criminal case are references to personal information of a member of the public who is identified in the records as a victim of a crime. The submitted information consists records of a criminal case. Section 552.117 does not apply to such information. Accordingly, the personal information of the individual that is contained in the record of the criminal case may not be withheld from the public pursuant to section 552.117 of the Government Code.

You assert that the social security numbers in the remaining information are confidential under section 552.101. A social security number is excepted from required public disclosure under section 552.101 of the Public Information Act (the "Act") in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number information we have marked, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

You next assert that the remaining information includes motor vehicle information excepted under section 552.130. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. We have marked the information in the submitted documents that the city must withhold pursuant to section 552.130.

In summary, the city must withhold exhibits 2B, 2D, and 2E from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. The city must withhold social security numbers in exhibit 2C to the extent such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. Finally, motor vehicle information in exhibit 2C must be withheld from disclosure under section 552.130. The remaining information 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).

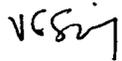
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 172291

Enc: Submitted documents

c: Ms. Ema Hoggard
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Grand Prairie, Texas 75050
(w/o enclosures)