



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 15, 2003

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

OR2003-0315

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# 175044.

The City of Garland Police Department (the "department") received a request for (1) all police reports in the last two years involving named individuals and occurring at a specified address, (2) all police reports involving a second specified address, and (3) a copy of report number 02R016307. You state that you have released some of the information responsive to this request. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You tell us that some of the requested information is the subject of an earlier request for which you sought an attorney general decision. This office issued a ruling pursuant to your request in Open Records Letter Ruling No. 2002-4934 (2002). In that ruling we found that portions of the requested information were excepted from disclosure under sections 552.101 and 552.130. However, we also found that some of the requested information was required to be released. To the extent the information responsive to the instant request is identical to the information we ruled to be excepted from disclosure in Open Records Letter Ruling No. 2002-4934 (2002) and the facts and circumstances surrounding the prior letter ruling have not changed since the issuance of that ruling, we find you may rely on that ruling to withhold the requested information. *See* Open Records Decision No. 673 (2001). However, to the extent the requested information is identical to information we previously held must be released, you must release the information. *See* Gov't Code § 552.301(f). We now address your arguments concerning the remaining information.

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. 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 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.

Some of the information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, some of the submitted information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold that information.

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 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 some of the requested documents relate 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, we agree that some of the documents you seek to withhold under section 261.201 are confidential and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, that you have submitted documents that involve neither juvenile conduct nor allegations of abuse or neglect. These documents may not be withheld under either section 58.007 or 261.201 of the Family Code. We have marked these documents for your convenience.

Finally, we note that you assert section 552.130 of the Government Code with regard to the requested report number 02R016307. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas license plate number that we have marked under section 552.130. You must release the remainder of the report to the requestor.

In summary, you must rely on our previous ruling for releasing or withholding the documents addressed in that ruling. You must release report number 02R016307 to the requestor with the exception of the Texas license plate number, which is excepted from disclosure under section 552.130. You must release the documents we have marked as they do not involve juvenile conduct or allegations of abuse or neglect. The remainder of the submitted information is confidential under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code and must not 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 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 175044

Enc: Submitted documents

c: Mr. Frederick Wayne McCabe
1711 Lakestone Court
Garland, Texas 75044
(w/o enclosures)