



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2003

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

OR2003-9080

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192918.

The City of Garland Police Department (the "department") received a request for all police records concerning two named individuals. You note that you have released some of the responsive information as an intergovernmental transfer of information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 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 another statute makes confidential. Section 261.201 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.

Upon review of the submitted information, we find that report numbers 2003R022777 and 2003R023632 do not involve investigations of suspected abuse or neglect of a child made under chapter 261. Therefore, you cannot withhold these reports under section 261.201 of the Family Code. However, we find that report numbers V04B0029 and 2002R004424 involve investigations of alleged or suspected abuse or neglect made under chapter 261. 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 find that these two reports are confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). The requestor does not fall within any category of persons or entities that are authorized to receive this confidential information under section 261.201. *See* Fam. Code § 261.201(b)-(g) (enumerating entities authorized to receive section 261.201 information). Accordingly, we conclude that the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code.

You also assert that offense report number 2003R019778 is excepted from disclosure pursuant to section 58.007 of the Family Code. 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.

Fam. Code § 58.007. Section 51.02(2)(A) of the Family Code defines “child” for purposes of section 58.007, in part, as a “person who is . . . ten years of age or older and under 17 years of age.” The report at issue involves juvenile conduct that occurred after September 1, 1997. Thus, we agree that the offense report 2003R019778 is confidential pursuant to section 58.007(c) of the Family Code. Section 58.007(c) enumerates specific entities that may receive and inspect confidential juvenile information. *See* Fam. Code § 58.007(c), (d), (e), (f) (indicating circumstances under which certain entities may receive juvenile law enforcement records). Dallas County Family Court Services, however, is not among these listed entities. Since the department may not release report number 2003R019778 to the requestor under section 58.007, we conclude that this report must be withheld in its entirety under section 552.101 of the Government Code.

In summary, report numbers 2003R022777 and 2003R023632 must be released to the requestor.¹ The remaining responsive information must be withheld under section 552.101 in conjunction with sections 58.007 and 261.201 of the Family Code.

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

¹ If the department receives a future request for these documents, the department should ask our office for a decision because the documents contain confidential information that may be excepted from disclosure in the future. We note that the requestor in this instance has a special right of access to this information under section 552.023 of the Government Code.

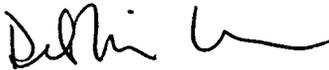
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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. 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 192918

Enc. Submitted documents

c: Ms. J. Denise Frank
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Dallas, Texas 75202-6635
(w/o enclosures)