



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2004

Ms. Denise Obinegbo
Open Records Specialist
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2004-0448

Dear Ms. Obinegbo:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 194496.

The Richardson Police Department (the "department") received a request for information concerning police calls made to two addresses. You indicate that the requestor has been provided with front sheet information from the offense reports and all call cards. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and includes information made confidential by other statutes. Section 552.101 thereby encompasses the confidentiality provisions of sections 58.007 and 261.201 of the Family Code.

You claim that some of the submitted information is subject to section 58.007 of the Family Code. Section 58.007(c) makes confidential 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. Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* 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). The juvenile must have been ten years of age or older and under seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). One of the submitted reports involves juvenile conduct that occurred after September 1, 1997. Furthermore, while the

requestor appears to be a guardian of the juvenile, none of the exceptions in section 58.007 allow for disclosure of the information to the requestor. *See* Fam. Code § 58.007(c)-(h). Accordingly, the department must withhold the complete investigative file for service number 03-040565 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You also claim that some of the submitted information is subject to section 261.201 of the Family Code. Section 261.201(a) provides:

(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 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.

Some of the submitted information was used or developed in an investigation of child abuse and therefore falls within the scope of section 261.201. Accordingly, the department must withhold the complete investigative file for service number 02-103049 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

Finally, you claim that the remaining submitted information is subject to section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than 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

¹We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "DPRS"), a guardian who is a requestor may be entitled to access to the 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 [DPRS] 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.

result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to a case that concluded in a final result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the investigative file for service number 02-102262.

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the investigative file for service number 02-102262 pursuant to section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the department must withhold the complete investigative file for service number 03-040565 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the complete investigative file for service number 02-103049 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the investigative file for service number 02-102262 may be withheld under section 552.108(a)(2) of the Government 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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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 ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 194496

Enc. Submitted documents

c: Ms. Rosalind Boreaux
914 Regency Court #766
Richardson, Texas 75080
(w/o enclosures)