ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2004

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2004-3976

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201510.

The Mesquite Police Department (the "department") received a request for information regarding disturbance calls at a specified address in the City of Mesquite from January, 2000 through September 9, 2003. You claim that the 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.

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 encompasses information made confidential by other statutes. You contend that the submitted information consists of juvenile law enforcement records that are confidential pursuant to section 58.007 of the Family Code, which provides in pertinent part 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(c). A portion of the submitted information involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Thus, we find that the information we have marked is confidential pursuant to section 58.007(c) of the Family Code. The department must withhold the marked information from disclosure under section 552.101 in conjunction with section 58.007.

The remainder of the submitted information does not identify a juvenile as a criminal suspect. Furthermore, you have not demonstrated how the remaining information consists of records of juvenile criminal conduct, delinquent conduct, or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining "delinquent conduct;" "conduct indicating a need for supervision"). Thus, we determine that the remainder of the submitted information cannot be withheld under section 552.101 in conjunction with section 58.007 of the Family Code and must be released.

In summary, we have marked the portion of the submitted information that the department must withhold pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The remainder of the submitted 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

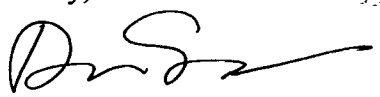
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 201510

Enc: Submitted documents

c: Ms. Janice Allen
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(w/o enclosures)