



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

July 8, 2004

Ms. Kathleen Weisskopf  
Police Legal Advisor  
Arlington Police Department  
P.O. Box 1065  
Mail Stop 04-200  
Arlington, Texas 76004-1065

OR2004-5572

Dear Ms. Weisskopf:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204763.

The Arlington Police Department (the "department") received a request for copies of all records, including full narrative reports, witness statements, photographs, investigative notes and any other public records pertaining to any calls to an identified address during a specified time period. You claim that some of 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. 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(c). We have reviewed the submitted information and conclude that the reports submitted as Exhibits B-1 and C involve allegations of either delinquent conduct or juvenile conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (providing that in title 3 of the Family Code, "child" means person who is ten years of age or older and under seventeen years of age), .03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). Thus, these reports are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these two reports are confidential in their entireties in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

You also claim that the records submitted as Exhibits B-2 and B-3 are confidential under section 261.201(a) of the Family Code. Section 261.201(a) 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.

The report submitted as Exhibit B-3 indicates the involvement of the Child Protective Services Division of the Texas Department of Family and Protective Services. Because this information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is 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, the report submitted as Exhibit B-3 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this report from disclosure under section 552.101 of the Government Code as information made confidential by law.

However, the report submitted as Exhibit B-2 relates to a threatening telephone call involving two adults. Information considered confidential under section 261.201 includes files, reports, records, communications, and working papers used or developed in an investigation of alleged child abuse or neglect. For purposes of chapter 261 investigations, a child is defined as a "person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes." *See* Fam. Code § 101.003(a). Upon review of this information, we conclude that this report does not constitute a working paper used or developed in an investigation under chapter 261. Therefore, Exhibit B-2 may not be withheld under section 552.101 as confidential pursuant to section 261.201 of the Family Code.

We note that some of the information in Exhibit B-2 is confidential under section 552.101 in conjunction with common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Accordingly, we have marked the information within Exhibit B-2 that is confidential under common law privacy, and which must be withheld pursuant to section 552.101.

Some of the information in Exhibit B-2 must also be withheld under section 552.130 of the Government Code.<sup>1</sup> In relevant part, section 552.130 provides:

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

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state of a local agency authorized to issue an identification document.

Therefore, the department must withhold the information we have marked as confidential under section 552.130.

In summary, the department must withhold as confidential the report submitted as Exhibits B-1 and C under section 552.101 in conjunction with section 58.007(c) of the Family Code; the department must withhold as confidential the report submitted as Exhibit B-3 under section 552.101 in conjunction with section 261.201 of the Family Code; the department must withhold the information we have marked in Exhibit B-2 as confidential under section 552.101 and common law privacy; and the department must withhold the information we have marked under section 552.130. The department must release all remaining information.

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,



Marc A. Barenblat  
Assistant Attorney General  
Open Records Division

MAB/jh

Ref: ID# 204763

Enc. Submitted documents

c: E. L. Carraway, III  
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(w/o enclosures)