



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2004

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P. O. Box 1952
Longview, Texas 75606-1952

OR2004-7117

Dear Mr. Ray:

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# 207697.

The City of Longview (the "city") received a request for five categories of information concerning a particular former police officer as well as any correspondence between the city's police department and "Longview High School and/or Longview Independent School District involving [the named officer] and/or the school resource officer program since Jan. 1, 2001." You inform us that you have released most of the requested information. However, you claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address the documents in the clipped stack. The city argues that this information is confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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.

Fam. Code § 261.201. We note that the information that you have marked under section 261.201 is an internal affairs investigation conducted by the city's police department. We further note that the allegation that is the basis of the investigation is a violation of the "Longview Police Department Code of Conduct, Section 4.09," concerning unnecessary or inappropriate use of force. Because you have not indicated, and the documents do not reflect, that the information at issue was used or developed in an investigation of child abuse or neglect, we find that the information is not confidential under section 261.201.

Alternatively, the city argues that the information in the clipped stack is confidential under section 552.101 in conjunction with 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. You contend that the information at issue is confidential, in whole or in part, pursuant to section 58.007 of the Family Code. Upon review, however, we note that the documents in which the juvenile's identity appears are administrative records rather than juvenile law enforcement records. Therefore, we conclude that the city may not withhold the information from disclosure pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code.

However, we note that some of the information in the clipped stack is protected by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. You must withhold the identifying information of the juvenile we have marked under section 552.101 in conjunction with common-law privacy. See Open Records Decision No. 394 (1983).

We now turn to the remaining information and note that it contains two documents entitled Report of Separation of License Holder addressed to the Texas Commission on Law Enforcement ("the commission"). This form, commonly referred to as an "F-5," is made confidential by section 1701.454 of the Occupations Code. Section 1701.452 requires that a law enforcement agency submit a report to the commission regarding an officer licensed under chapter 1701 who resigns from the law enforcement agency. See Occ. Code § 1701.452. Section 1701.454 provides in relevant part:

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454. Therefore, the city must withhold the F-5 forms pursuant to section 552.101 in conjunction with section 1701.454.

We note that you have marked some information under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members.¹ You must withhold the information you have marked under section 552.117(a)(2).

Section 552.130 of the Government Code excepts from disclosure information that "relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (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 or a local agency authorized to issue an identification document." Section 552.130 only protects certain motor vehicle information issued by an agency of the State of Texas. It is not clear from the submitted information whether the driver's license number you have marked was issued by the State of Texas. Therefore, to the extent the driver's license number you have marked was issued by the State of Texas, it must be withheld under section 552.130. We also note that you have marked a "state identification number." If this number relates to a personal identification document issued by an authorized agency of this state, it must also be withheld in accordance with section 552.130.

¹ "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

Finally, we note that you have marked an e-mail address under section 552.137 of the Government Code. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. We also note that section 552.137 does not apply to a business's general e-mail address or website address. The e-mail address you have marked does not appear to be of a type specifically excluded by section 552.137(c). Therefore, unless the individual at issue consents to release of his e-mail address, the city must withhold the e-mail address you have marked under section 552.137.

In summary, you must withhold the juvenile's identifying information that we have marked in the clipped stack of documents under section 552.101 of the Government Code and common-law privacy. You must withhold the following from the remaining information: (1) the F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code, (2) the information that you have marked under section 552.117(a)(2) of the Government Code, (3) the driver's license you have marked under section 552.130 of the Government Code, to the extent it was issued by the State of Texas, (4) the state identification number you have marked under section 552.130, to the extent it relates to a personal identification document issued by an authorized agency of this state, and (5) the e-mail address you have marked under section 552.137 of the Government Code, unless the individual at issue consents to release of his e-mail address. You must release the remaining information 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/krl

Ref: ID# 207697

Enc: Submitted documents

c: Mr. John Lynch
City Editor
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(w/o enclosures)