



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2004

Mr. Ron G. MacFarlane, Jr.
Sifford, Anderson, Vice & Macfarlane
2001 Bryan Street, Suite 2050
Dallas, Texas 75201

OR2004-10902

Dear Mr. MacFarlane:

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# 216014.

The Cedar Hill Police Department (the "department"), which you represent, received a request for police reports pertaining to a specified address taken from January, 2004, through the date the department received the request. 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 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 agree that some of the reports involve allegations of juvenile conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen years of age), .03(b)(3) (defining conduct indicating a need for supervision to include, among other things, "the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return"). Thus, the reports we have marked are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these reports are confidential in their entirety 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. However, you do not demonstrate, nor does it appear from our review, that the remaining reports allege that the child violated a penal statute or otherwise engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03. Thus, this information is not confidential under section 58.007 and may not be withheld on that basis.

We note, however, that one of the remaining reports contains information that must be withheld under section 552.130 of the Government Code.¹ In relevant part, section 552.130 provides:

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

(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[.]

Therefore, you must also withhold the Texas license plate number we have marked under section 552.130.

¹ 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).

In summary, the department must withhold as confidential the reports we have marked under section 552.101 in conjunction with section 58.007(c) of the Family Code. The department must withhold the marked Texas license plate number under section 552.130. The department must release all remaining information to the requestor.²

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

² We note that the submitted information includes information that would normally be excepted from disclosure under the doctrine of common law privacy. However, because the information pertains to the requestor's minor child, we find that the requestor is authorized to receive this information in this instance. *See* Gov't Code § 552.023 (providing that individual's authorized representative has special right of access to information when only basis for excepting information from disclosure involves protection of individual's privacy interest); *see also* Open Records Decision No. 481 (1987). However, if the department receives another request for this information from a different requestor, the department should again seek a decision from this office before releasing this information.

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/sdk

Ref: ID# 216014

Enc. Submitted documents

c: Ms. Latonia D. Sewell
213 Vines Drive
Cedar Hill, Texas 75104
(w/o enclosures)