



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2005

Mr. Mark Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2005-07148

Dear Mr. Mann:

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# 229745.

The Garland Police Department (the "department") received a request for police reports regarding two addresses and pertaining to four named persons from 1997 through 2000. You state that you have released most of the requested information, but claim that the submitted 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." Gov't Code § 552.101. This section encompasses information that is made confidential by statute. 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(a). You claim that you have marked the submitted police reports that are confidential under section 261.201. Upon review, we agree that most of the reports were used or developed in an investigation of alleged or suspected abuse or neglect of a child. *See* Fam. Code §§ 101.003(a) (defining “child” as “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”), 261.001(1), (4) (defining “abuse” and “neglect” for the purposes of chapter 261 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 reports we have marked are confidential in their entirety pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). As to the remaining reports you seek to withhold under section 261.201, we find that two do not indicate the age of the victim and the other is not a report of alleged or suspected abuse or neglect. *See* Fam. Code §§ 101.003(a), 261.001(1), (4). Thus, you have failed to demonstrate that these remaining reports are records relating to the abuse or neglect of a child. *See* Gov’t Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, these reports are not confidential under section 261.201 and must be released.

You also claim that some of the submitted police reports that are confidential under section 58.007 of the Family Code, which is also encompassed by section 552.101 of the Government Code. Law enforcement records involving juvenile offenders and 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(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). After reviewing the marked reports, we find that most of them pertain to juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; thus, the reports we have marked are confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code. However, the remaining report concerns a welfare check of two juveniles. You have failed to demonstrate that this report is a law enforcement record of a child. *See* Gov’t Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, this report is not confidential under section 58.007 and must be released.

Finally, you claim that the redacted portions of report #2000R018799 are excepted from disclosure under section 552.101 in conjunction with common-law privacy. The common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The information at issue relates to a sexual assault. Generally, only information tending to identify victims of serious sexual offenses is protected by common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the report at issue and agree that most of the information that the department has marked must withheld under section 552.101 in conjunction with common-law privacy. We have marked the information that does not identify the victim, and therefore, may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the reports we have marked under section 552.101 of the Government Code in conjunction with sections 58.007 and 261.201 of the Family Code. The department must withhold the marked information in report #2000R018799 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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).

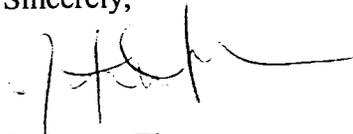
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/seg

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Enc. Submitted documents

c: Ms. Jamie Mayes  
3417 Meadowcreek Lane  
Sachse, Texas 75048  
(w/o enclosures)