



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 9, 2005

Mr. Nathan C. Barrow
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-07202

Dear Mr. Barrow:

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# 230006.

The City of Fort Worth (the "city") received a request for all calls or reports made to a particular address, including a particular report. 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." This section encompasses confidentiality provisions such as 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. 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). 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 find that report service numbers 05004256, 05023951, and 05057708 involve allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, they are subject to 58.007. Since none of the exceptions in section 58.007 appear to apply, these documents are confidential in accordance with section 58.007(c) of the Family Code and must be withheld in their entirety pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses confidentiality provisions such as section 261.201(a) of the Family Code, which 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). We have reviewed the submitted information and find that report service numbers 05011891 and 05054133 consist of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Thus, these documents are 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 this assumption, we conclude that these reports are 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 these documents from disclosure under section 552.101 of the

Government Code as information made confidential by law.¹ Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation of child abuse, the department must not release front page offense report information in cases of alleged child abuse.

However, upon review of report service number 05010388, we find the report does not identify a child as a suspect or offender. *See* Fam. Code § 51.02(2) (defining “child”). We therefore find the report is not a juvenile law enforcement record for purposes of section 58.007. Nor have you demonstrated that the information at issue consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See* Fam. Code § 261.001(1) (defining “abuse”), (4) (defining “neglect”). Therefore, report service number 05010388 may not be withheld under section 552.101. As you make no other argument against disclosure, and the information is not otherwise confidential, this report must be released in its entirety.

Section 552.101 also encompasses confidentiality provisions such as section 772.218 of the Health and Safety Code. This statute makes confidential the originating telephone numbers and addresses of 911 callers furnished by a service supplier and applies only to an emergency 911 district established in accordance with chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. *See* Open Records Decision No. 649 (1996). Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. You inform us that the city is included in an emergency communication district that is subject to section 772.218. Therefore, the submitted originating telephone numbers and addresses of 911 callers that were provided by a 911 service provider are confidential and must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

In summary, the city must withhold report service numbers 05004256, 05023951, and 05057708 under section 552.101 in conjunction with section 58.007 of the Family Code. Report numbers 05011891 and 05054133 must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. The city must also withhold the phone numbers and addresses of 911 callers in the requested documents under section 552.101 in conjunction with section 772.218 of the Health and Safety Code. The remaining information must be released to the requestor.

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child’s parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

Although you request previous determinations regarding information excepted from disclosure under section 552.101 in conjunction with sections 58.007 and 261.201 of the Family Code and section 772.218 of the Health and Safety Code, we decline to issue any at this time. Accordingly, 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); *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,

A handwritten signature in black ink, appearing to read 'J. Flores', with a long horizontal line extending to the right.

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/seg

Ref: ID# 230006

Enc. Submitted documents

c: Mr. Curtis Shorts
5517 Carver Drive
Fort Worth, Texas 76107
(w/o enclosures)