ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2006

Ms. Kathleen Weisskopf
Police Legal Advisor
Arlington Police Departmen
Post Office Box 1065
Arlington, Texas 76004-1065

OR2006-01876

Dear Ms. Weisskopf:

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# 243120.

The Arlington Police Department (the "department") received a request for any and all reports and calls regarding the requestor and her children. You state that you have released a majority of the requested information. You claim that the remaining 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 of the Government Code 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 protected by other statutes. Section 58.007 (c) of the Family Code applies to juvenile conduct that occurred after September 1, 1997 and provides in relevant part:

> (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;
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> (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
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> (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). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. Section 58.007 applies to delinquent conduct as well as conduct indicating a need for supervision. *See* Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child); Open Records Decision No. 628 at 6 (1994) (predecessor statute). After reviewing the submitted information, we conclude that incident report numbers 030064066, 050064835, 050070290, and 000067471 involve juvenile conduct that occurred after September 1, 1997. Accordingly, these reports are confidential under section 58.007 of the Family Code, and must be withheld pursuant to section 552.101 of the Government Code as information made confidential by law. The department, however, has failed to demonstrate how any portion of the remaining submitted information constitutes a juvenile law enforcement record or file for the purposes of section 58.007. Thus, no portion of the remaining information may be withheld on that basis.

Section 552.101 of the Government Code also encompasses 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:
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> > (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). Because incident report number 050069011 was used or developed in an investigation into the alleged sexual assault of a child, the information is within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001 (defining "abuse" and "neglect" for purpose of chapter 261 of the Family Code); 101.003(a) (defining "child" for purposes of section 261.201 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"). 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, incident report number 050069011 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.[1] The department, however, has failed to demonstrate how incident report number 050068980 constitutes a report of alleged or suspected abuse or neglect made under chapter 261 of the Family Code or that it was used or developed in an investigation under chapter 261. Therefore, no portion of report number 050068980 may be withheld on this basis.

We note, however, that incident report number 050068980 contains a Texas driver's licence number and license plate number.[2] Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas driver's license and license plate information we have marked.

In summary, incident report numbers 030064066, 050064835, 050070290, and 000067471 must be withheld under section 552.101 of the Government Code in connection with section 58.007 of the Family Code. In addition incident report number 050069011 must be withheld under section 552.101 of the Government Code pursuant to section 261.201 of the Family Code. Finally, the Texas driver's license number and license plate number that we have

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[1]We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the requestor 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.

[2]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).

marked must be withheld pursuant to section 552.130 of the Government Code. The remaining information must be released.[3]

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

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[3]We note that some of this information is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor or her authorized representative, the department should again seek our decision.

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 Office of the Attorney General 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. 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,

Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/jh

Ref: ID# 243120

Enc. Submitted documents

c: Ms. Shelley M. Birdwell
P.O. Box 122328
Arlington, Texas 76010
(w/o enclosures)