



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2008

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2008-09705

Dear Ms. McClellan:

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# 315830.

The Dallas Police Department (the "department") received a request for all records and reports pertaining to a specified address for a certain time period. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You state that the department received the request for information on April 25, 2008; we note, however, that the request was sent by e-mail on April 24, 2008.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The submitted information indicates that the person who received the e-mail request is either the department's officer for public information or a person designated by that officer. *See* Gov't Code § 552.301(c) (written request includes request in writing that is sent by e-mail or facsimile to officer for public information or person designated by that officer); *see also id.* § 552.301(e)(1)(C) (government body must submit signed statement with date when written request for information was received or evidence sufficient to establish that date). The department did not request a decision from this office until May 9, 2008; thus, the department failed to comply with the procedural requirements mandated by section 552.301. *See id.* § 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because your claims under sections 552.101, 552.130 and 552.147 of the Government Code can provide compelling reasons for non-disclosure, we will address these exceptions.

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 exception encompasses information that other statutes make confidential. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand that the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone numbers and an address that the department seeks to withhold. To the extent that the numbers and address were furnished by a 911 service supplier, we agree that the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. For purposes of section 58.007, a "child" is defined as a person ten

years of age or older and under seventeen years of age. Fam. Code. § 51.02(2)(A). 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.

Id. § 58.007(c). You claim that a portion of the submitted information involves juveniles engaged in delinquent conduct that occurred after September 1, 1997. However, in some of the information at issue, the suspects or offenders are unknown or unidentified and thus, these reports do not identify juveniles engaged in delinquent conduct for the purposes of section 58.007(c). As it does not appear that any of the exceptions in section 58.007(c) of the Family Code apply, the department must withhold the information we have marked in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 261.201 of the Family Code. 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.

Id. § 261.201(a). The department has marked information that it seeks to withhold under section 261.201 (a). Upon review of the information you have marked, we find that it was used or developed in an investigation of alleged or suspected neglect. *See id.* § 261.001(4)(a) (definition of “neglect” includes “leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm”). Therefore, this information is 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 the information you have marked is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also raise section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We agree that some of the submitted information is protected from disclosure by common-law privacy. The department must withhold the information you have marked, except as we have marked for release. The department must also withhold the additional information we have marked under section 552.101 on this basis.

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.” Gov’t Code § 552.130(a)(1)-(3). Accordingly, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. The department may withhold the submitted social security numbers under section 552.147 of the Government Code.²

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, to the extent that the information was furnished by a 911 service supplier, the department must withhold the telephone numbers and address that you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Except as we have marked for release, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.101 in conjunction with common-law privacy. The department must withhold the information you have marked, as well as the additional information we have marked, under section 552.130. The department may withhold the submitted social security numbers under section 552.147 of the Government Code. The remaining information must be released 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/mcf

Ref: ID# 315830

Enc. Submitted documents

c: Ms. Linda Hamilton
Harrison & Hull, L.L.P.
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(w/o enclosures)