



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2008

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-17203

Dear Mr. Byles:

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# 330838 (City of Fort Worth No. 0039-08).

The City of Fort Worth (the "city") received a request for domestic violence reports or call sheets for two specified addresses during a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you have submitted.

Initially, we note you have only submitted the call sheets for our review. Therefore, to the extent any responsive reports existed when the present request was received, we assume they have been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 552.101 encompasses 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, audiotapes, videotapes, 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 state portions of the submitted call sheets are subject to section 261.201 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). Based on your representations and our review, we find portions of the submitted information, which we have marked, are within the scope of section 261.201 of the Family Code. You do not state that the city has adopted a rule that governs the release of this type of information. Therefore, the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ You have not demonstrated, however, how the remaining information you have marked consists of files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under section 261.201 of the Family Code. Thus, the remaining information you have marked may not be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses 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). Section 58.007 provides in pertinent part 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:

¹As ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). You state call number 062922125 is subject to section 58.007 of the Family Code. Upon review, we find call number 062922125 involves juvenile conduct in need of supervision that occurred after September 1, 1997. *See id.* § 51.03(b)(3) (defining "conduct indicating a need for supervision" to include "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"). Therefore, call number 062922125 is subject to section 58.007. Section 58.007(e) allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). We note the requestor is the parent of the juvenile suspect; therefore, the information pertaining to the requestor's child may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007. *See id.* § 58.007(e). Section 58.007(j)(2), however, provides that information subject to any other exception to disclosure under the Act or other law must also

be redacted. *See id.* § 58.007(j)(2). Thus, because you assert that portions of call number 062922125 are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, we will address your argument under this exception. *See id.* § 58.007(j)(2).

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service provider confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000.

You state that the city is part of an emergency communications district established under section 772.218. You explain the telephone numbers you have marked in the remaining information were furnished by a 9-1-1 service provider. Based on your representations and our review, we conclude the city must withhold the telephone numbers you have marked in the remaining information 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 the information we have marked under section 552.101 in conjunction with section 261.201 of the Family Code. The city also must withhold the originating telephone numbers it has marked in the remaining information under section 552.101 in conjunction section 772.218 of the Health and Safety Code. 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 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eeg

Ref: ID# 330838

Enc. Submitted documents

c: Requestor
(w/o enclosures)