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## YEAR 2005 CASE SUMMARIES

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By  
**The Honorable Pat Garza**

Associate Judge  
386th District Court  
San Antonio, Texas

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### **Texas Attorney General says that parent not excepted from Family Code confidentiality restrictions.(05-2-26)**

**On March 31, 2005, the Texas Attorney General opined that section 58.007 of the Family Code does not allow the disclosure of juvenile records involving allegations of delinquent conduct or conduct indicating a need for supervision to juvenile's parent.**

05-2-26. Texas Attorney General Opinion No. OR 2005-02732, 2005 Tex.AG Lexis 2959 (3/31/05).

Re: Whether records kept by the Georgetown Police Department, relating to the requestor's daughter is subject to required public disclosure under the Public Information Act.

Ms. Patricia E. Carls  
City Attorney  
City of Georgetown  
106 East Sixth Street, Suite 550  
Austin, TX 78701

#### OPINION:

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 # 221335.

The Georgetown Police Department (the "department"), which you represent, received a request for "anything and everything" related to the requestor's daughter. 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.

Initially, we note that Incident No. 2007318 and the related information are subject to a previous ruling by this office. *See* Open Records Letter No. 2005-01414 (2005). In that ruling, we determined that you failed to comply with the fifteen-day deadline required by *section 552.301 of the Government Code*, resulting in the legal presumption that the information at issue was public. We further determined that if the department has any records in which the daughter is portrayed as a suspect, defendant, or arrestee, it would normally have to withhold such information under common-law privacy as encompassed by *section 552.101 of the Government Code*. However, when the requestor is the parent of the minor, the requestor has a special right of access to information that would normally be withheld under the daughter's common-law right of privacy. Therefore, under the current circumstances, we determined that

the information at issue could not be withheld under section 552.101 on the basis of the holding in *Reporters Committee*. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We finally concluded that the information at issue was confidential pursuant to section 262.201 of the Family Code and must therefore be withheld in its entirety pursuant to section 552.101.

The facts and circumstances surrounding that ruling do not appear to have changed. Therefore, to the extent that the submitted records consist of the same information that was at issue in Open Records Letter No. 2005-01414 (2005), the department must comply with our previous ruling. See Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on). To the extent the submitted information is not subject to our prior ruling, we address the submitted arguments.

*Section 552.101 of the Government Code* excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common-law right of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

In this instance, the requestor asks for all information concerning his minor daughter. We therefore believe the daughter's right to privacy has been implicated. Thus, if the department has any records in which the daughter is portrayed as a suspect, defendant, or arrestee, it would normally have to withhold such information under common-law privacy as encompassed by *section 552.101 of the Government Code*. See *id.* We note, however, that as the parent of a minor, the requestor would have a special right of access to information that would ordinarily be withheld to protect the daughter's common-law privacy, and such information could not be withheld from him solely on that basis. See *Gov't Code* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). Thus, under the present circumstances, none of the requested information may be withheld under section 552.101 on the basis of the holding in *Reporters Committee*.

Section 552.101 also encompasses information protected by chapter 58 of the Family Code. *Section 58.007 of the Family Code* makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. See *Fam. Code* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). Section 58.007(c) provides:

(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 conclude that Incident Nos. 1007783, 1007816, 1026918, and 03024250 involve allegations that a juvenile engaged in delinquent conduct or conduct indicating a need for supervision after September 1, 1997. Thus, Incident Nos. 1007783, 1007816, 1026918, and 03024250 are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, Incident Nos. 1007783, 1007816, 1026918, and 03024250 are confidential in their entirety in accordance with *section 58.007(c) of the Family Code*. Thus, Incident Nos. 1007783, 1007816, 1026918, and 03024250 must be withheld from disclosure pursuant to *section 552.101 of the Government Code*. Section 58.007 is not applicable to the remaining reports, Incident Nos. 2009321 and 03015751.

We note that Incident No. 03015751 contains Texas motor vehicle record information. *Section 552.130 of the Government Code* provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

*Gov't Code § 552.130*. You must withhold the marked Texas motor vehicle record information in Incident No. 030 15751 under section 552.130.

In summary, the department must comply with Open Records Letter No. 2005-01414 (2005) with respect to responsive information that was previously ruled on. Incident Nos. 1007783, 1007816, 1026918, and 03024250 must be withheld from disclosure pursuant to *section 552.101 of the Government Code* and *section 58.007 of the Family Code*. The marked Texas motor vehicle record information in Incident No. 03015751 must be withheld under *section 552.130 of the Government Code*. The remaining information in Incident Nos. 2009321 and 03015751 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 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 [\*9] 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.

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