



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 29, 1996

Mr. Robert J. Miklos  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR96-0094

Dear Mr. Miklos:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38035.

The Dallas Police Department (the "department") received a request for "any and all documents in the possession of the Dallas Police Department relating to the investigation and prosecution of" an individual. You claim that the requested information, with the exception of the first page of the incident report, should be excepted from required public disclosure under section 552.101 of the Government Code. You have submitted a representative sample of the requested information for our review.<sup>1</sup>

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth calendar day after the date of receiving the written request. The department received the written request for information on December 11, 1995. You did not request a decision from this office until January 4, 1996, more than ten

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative samples" of records submitted to this office are 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.

days after the requestor's written request. Therefore, we conclude that the city failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2.

We conclude that compelling reasons do exist for withholding certain documents under section 552.101, which excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You claim that section 34.08 of the Family Code, as applied through section 552.101, excepts the requested information from disclosure. Title 2 of the Family Code, which includes section 34.08, was repealed in the most recent legislative session. Section 261.201(a) of the new Title 2, effective April 20, 1995, is substantively the same as section 34.08(a) of the previous Title 2. Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Sess. Law Serv. 113, 262, 282 (Vernon).<sup>2</sup> Section 261.201(a) of the Family Code provides:

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.*

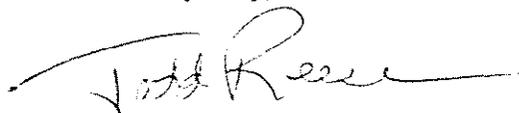
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<sup>2</sup>The new legislation does not affect a proceeding under the Family Code pending on April 20, 1995, the effective date. Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 3(a), 1995 Tex. Sess. Law Serv. 114, 282 (Vernon). It appears that this investigation took place after April 20, 1995; therefore, the new law applies.

Act of May 25, 1995, 74th Leg., R.S., ch. 751, § 93, 1995 Tex. Sess. Law Serv. 3924 (Vernon) (emphasis added). The records requested were developed during a child abuse investigation. Therefore, the requested documents are confidential and must be withheld under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", written over a horizontal line.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/ch

Ref: ID# 38035

Enclosures: Submitted documents

cc: Mr. Thomas L. Mighell  
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901 Main Street, Suite 4000  
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(w/o enclosures)