



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 12, 1996

Ms. Judith A. Hunter  
Paralegal  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR96-0305

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39045.

The City of Georgetown (the "city") received a request for "everything and anything on file at the Georgetown [police department] for each of these individuals: Paul Ray Atkinson, Raymond Atkinson, Mike Crain and Mya Johnson." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code, and the informer's privilege incorporated by section 552.101 of the Government Code.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can be overcome only by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

The city received this request on February 9, 1996; however, the city did not request an opinion from this office until February 27, 1996. Therefore, only if the information is confidential by law or other compelling reasons exist as to why the information should not be made public will the requested information be excepted from required public disclosure. Open Records Decision No. 195 (1978). As section 552.101 of the Government Code is a compelling reason, we will address your argument under that section.

You claim that one requested document, an investigation into allegations of sexual abuse of a child is confidential under section 552.101. Section 261.201(a) of the Family Code provides:

(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;

(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.

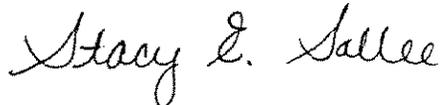
The other provisions of section 261.201 do not appear to apply here. We are not aware of any rules promulgated by the city which permit the dissemination of this type of information. Accordingly, we agree that this investigative report is made confidential by section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. See Open Records Decision No. 440 (1986) (applying statutory predecessor to Fam. Code § 261.201(a)).

We note that section 552.108(a) is a discretionary exception and may be waived by a governmental body. As the city did not claim its exception to disclosure timely, its section 552.108(a) exception is waived. Similarly, the informer's privilege is waivable by a governmental body. Open Records Decision No. 549 (1990); cf. Open Records Decision No. 169 (1977). Therefore, the city may not withhold the other requested information.

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 39045

Enclosures: Submitted documents

cc: Mr. Joe Gibson  
225 Congress Avenue #255  
Austin, Texas 78701  
(w/o enclosures)