



March 8, 1999

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 11562
Houston, Texas 77251-1562

OR99-0642

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122582.

The Houston Police Department (the "department") received an open records request for three particular offense reports. You contend the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

We note at the outset that the department received the request for information on November 20, 1998. You requested an open records decision from this office on December 8, 1998. Consequently, you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to timely request an open records decision, the requested information is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston*

Chronicle Publ'g 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 Hancock*, 797 S.W.2d at 381.

You have not shown compelling reasons why two of the requested offense reports should not be released. In the absence of a demonstration that information contained in Exhibits 2 and 4 is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

On the other hand, Exhibit 3 pertains to the department's investigation of the possible abuse of a child. 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:

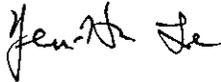
(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(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.* [Emphasis added.]

The confidentiality conferred on these records by section 261.201 of the Family Code constitutes a "compelling" reason for non-disclosure that overcomes the legal presumption that the records are public information. *See* Gov't Code § 552.302; Open Records Decision No. 150 (1977). You have not informed this office of any rules the department has adopted that would permit access to the requested records. Because the information at issue pertains to an investigation of abuse of a child, this office concludes that the department must withhold Exhibit 3 in its entirety pursuant to section 261.201 of the Family Code. *But see* Fam. Code § 261.201(b) (provision for court ordered access), (f) (limited right of access to records held by Department of Protective and Regulatory Services).

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is written in a cursive, slightly stylized font.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 122582

Enclosures: Submitted documents

cc: Mr. Melki Moussa
1100 Hercules-Suite 300
Houston, Texas 77058
(w/o enclosures)