



November 1, 1999

Captain John Bruce
Frisco Police Department
8750 McKinney Road, Suite 500
Frisco, Texas 75034

OR99-3058

Dear Captain Bruce:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129854.

The Frisco Police Department (the "department") received a request for police and prosecutor's records relating to an arrest. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code, and section 261.201 of the Family Code. We have considered the exceptions you claim and have reviewed the submitted information.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit to the attorney general a signed statement or sufficient evidence as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date.¹ Additionally, the governmental body must submit to the attorney general a copy of the specific information requested or a representative sample if the request is for voluminous records.²

The governmental body has fifteen business days from the date the governmental body receives the written request to submit the signed statement and copies of the requested information.³ 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

¹Act of May 25, 1999, 76th Leg., R.S., ch. 1319, §20, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified at Gov't Code §552.301(e)(1)(C)).

²Act of May 25, 1999, 76th Leg., R.S., ch. 1319, §20, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified at Gov't Code §552.301(e)(1)(D)).

³Act of May 25, 1999, 76th Leg., R.S., ch. 1319, §20, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified at Gov't Code §552.301(e)).

the signed statement and copies of the information requested are not submitted 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 only be overcome 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 a showing that the information is made confidential by another source of law or affects third party interests).

The department did not provide this office with a statement indicating when the request for public information was received by the department. We were unable to locate within the submitted material other evidence sufficient to determine the relevant date. The request is dated September 10, 1999. Assuming that this is the date the department received the request, you were required to furnish our office with copies of the requested documents on or before October 1, 1999, the fifteenth business day. You did not furnish this office copies of the documents until October 5, 1999. Consequently, you have not met your statutory burdens. The requested information is therefore presumed public. In the absence of a demonstration that the requested information 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. Open Records Decision No. 195 (1978). You assert that the information at issue is made confidential pursuant to section 552.101 of the Government Code. The application of Government Code section 552.101 is a compelling reason to overcome the presumption of openness.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides that

(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.

The requested information here consists of "files, reports, records, communications, audiotapes, videotapes, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. Family Code §§ 261.001(1)(a)(C), 261.103(1). You have not informed this office of any rules the city has adopted that would permit access to the requested records. We, therefore, conclude that the requested records are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must not release the requested records to the requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/nc

Ref: ID# 129854

Encl. Submitted documents

cc: Mr. David Stith
Stith & Stith, P.C.
671 East 18th Street, Suite 307
Plano, Texas 75074
(w/o enclosures)