



December 28, 1999

Ms. Elizabeth Elam
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
500 Throckmorton Street, Suite 3400
Fort Worth, Texas 76102-3821

OR99-3789

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 130762.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 150 (1977) (a compelling reason for withholding information would be a showing that the information is confidential by law or affects third-party interests).

In seeking to withhold the requested information here, you have raised section 552.101 of the Government Code in conjunction with 261.201 of the Family Code. Section 552.101

protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 261.201(a)(2) makes materials developed in an investigation of child abuse or neglect under chapter 261 confidential, except that such information may be disclosed under rules adopted by the investigating agency. Section 261.201 also provides for exceptions to the confidentiality of such information. *See, e.g.*, Fam. Code § 261.201(h) (section does not apply to investigations of child abuse or neglect in a home or facility regulated under chapter 42, Human Resources Code). A showing that information is made confidential under section 261.201 would constitute a compelling reason for withholding information under section 552.302 of the Government Code. However, since you have not submitted the information at issue here, or representative samples thereof, we have no basis for concluding that the requested information is subject to the section 261.201 confidentiality provisions. You must release the requested information unless it is made confidential under section 261.201. We caution that the distribution of confidential information constitutes a criminal offense. Gov’t Code § 552.352.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 130762

cc: Ms. Lynnette Wallace
1407 New Haven
Mansfield, Texas 76063