



April 7, 2000

Mr. Marty Wingo  
Administrative Assistant  
Frisco Police Department  
8750 McKinney Road, Suite 500  
Frisco, Texas 75034

OR2000-1377

Dear Mr. Wingo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135315.

You advise that the City of Frisco (the "city") received a request for an arrest report and arrest affidavit concerning a case of alleged indecency with a child. You seek to withhold the information responsive to the request under section 552.101 of the Government Code.

Section 552.101 requires withholding information made confidential by statute. 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.]

You have not informed this office of any rules the city has adopted that would permit access to the requested records. Because the information at issue pertains to an investigation of sexual indecency with a child, we conclude that you must withhold the requested records in their entirety pursuant to section 261.201 of the Family Code.<sup>1</sup> *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).

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).

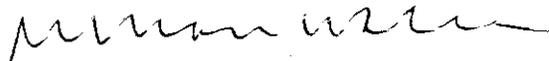
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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<sup>1</sup>We note that although the city did not submit a copy of the written request, as required by section 552.301(e)(1)(B), within fifteen business days following its receipt of the request, 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.

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#135315

Encl. Submitted documents

cc: Mr. Steve Miller  
Dallas Morning News  
3900 Plano Parkway  
Plano, Texas 75075-7807  
(w/o enclosures)