



July 13, 2000

Ms. Jeanine A. Cadena
Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR2000-2636

Dear Ms. Cadena:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137077.

The Town of Flower Mound (the "town") received a request for police report number 98-2101. You indicate that you have already released to the requestor the "front page" information contained in the report.¹ You claim that the remaining information is excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the submitted documents contain information related to alleged instances of child abuse. 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:

¹Section 552.108 does not apply to basic information about an arrest. Gov't Code § 552.108(c). Basic information is information that is considered to be front page offense report information. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Such information must be released even if is not actually located on the front page of the offense report. *Id.*

- (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.

We have marked the information that we believe consists of records and working papers used or developed in an investigation made under chapter 261 of the Family Code.² You have not informed this office of any rules the town has adopted that would permit access to the requested records. We, therefore, conclude that the marked 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 town must not release the requested records to the requestor.

You assert that section 552.108 excepts from disclosure the submitted information. Section 552.108(a)(2) excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” You assert that the “offense . . . concluded in a result other than a conviction or deferred adjudication.” The report on its face indicates that the disposition of the case is “Dismissed.” After reviewing the records at issue, we conclude that you have met your burden of establishing the applicability of section 552.108(a)(2) with regard to the requested offense report and that the information contained in the report therefore may be withheld from disclosure, with the following exception.

We note that the submitted information contains documents which appear to be records filed with a court. Specifically, the document is the affidavit for arrest. Documents filed with a court are generally considered public and must be released. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992); Gov’t Code § 552.022(a)(17). We have marked the affidavit which must be released to the requestor.

In summary, you must withhold from public disclosure under section 552.101 in conjunction with section 261.201 of the Family Code the information we have marked. You may withhold the remaining information pursuant to section 552.108(a)(2), with the exception of the affidavit for arrest, which must be released to the requestor.

²We note that a parent or other legal representative of a victim of alleged child abuse or neglect may have a right to obtain from the Texas Department of Protective and Regulatory Services portions of the information concerning a report of alleged abuse or neglect. Fam. Code § 261.201(g).

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).

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 137077

Encl. Submitted documents

cc: Mr. Kyle Falkenrath
821 Montana Ridge Drive
Grain Valley, Maryland 64029
(w/o enclosures)