



November 20, 2000

Ms. Lois Cochran  
Records Coordinator  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033-0677

OR2000-4461

Dear Ms. Cochran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142440.

The City of Cleburne (the "city") received a request for information. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code and section 58.007 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, "no later than the 15<sup>th</sup> business day after the date of receiving the written request," must submit to the attorney general "a copy of the written request for information." Gov't Code § 552.301(e)(1)(B). If the governmental body fails to submit a copy of the written request, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You state that the office received the request for information on October 3, 2000. Accordingly, the city's deadline for submitting the actual request for information to this office expired fifteen business days later on October 24, 2000. *See* Gov't Code § 552.301(e)(1)(B). However, as of the date of this letter-ruling, this office has still not received a copy of the written request for information. Therefore, the city has missed its

fifteen-day deadline as prescribed by section 552.301. Consequently, absent a compelling reason to withhold the requested information, the information must be released. This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* 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).

Having reviewed the submitted information, we find that a compelling reason exists because the information is confidential under section 552.101 in conjunction with section 261.201 of the Family Code.<sup>1</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as Family Code section 261.201(a). The relevant language of that statute reads as follows:

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted records relate to allegations of indecency of a child. Therefore, these records fall within the scope of section 261.201 of the Family Code. Accordingly, the city must withhold the records in their entirety pursuant to section 261.201

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<sup>1</sup>Although ordinarily this office will not raise exceptions that a governmental body has failed to claim, this office may raise section 552.101 on behalf of a governmental body. *See* Open Records Decision Nos. 455 at 3 (1987), 325 at 1 (1982).

of the Family Code as encompassed by section 552.101 of the Government Code.<sup>2</sup> See Open Records Decision No. 440 at 2 (1986) (predecessor statute).<sup>3</sup>

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>2</sup>We assume that the city has not adopted any rules that would permit access to the requested information.

<sup>3</sup>We note, however, that if the Texas Department of Protective and Regulatory Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that department's file. See Fam. Code § 261.201(f).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\seg

Ref: ID# 142440

Encl: Submitted documents

cc: Ms. Michelle Bristol  
1402 Mimosa  
Cleburne, Texas 76031  
(w/o enclosures)