



January 4, 2001

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County  
301 Jackson, Suite 621  
Richmond, Texas 77469-3108

OR2001-0018

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142924.

Fort Bend County (the "county") received a request for information related to payments made to three named individuals, or their employers, and to mediators paid by the county for certain services. You claim that the county has not made any payments to two of the named individuals.<sup>1</sup> You indicated that the county has released most of the responsive information to this requestor, however, you seek to withhold a portion of the responsive information. Your argument that this information is excepted from public disclosure raises section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and with the common law right of privacy. We have considered the exception you raise and reviewed the submitted information.

Section 552.022 of the Government Code provides several categories of information that are not excepted from required disclosure unless they "are expressly confidential under other law." In pertinent part this section reads:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>The Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to an open records request. Open Records Decision No. 445 (1986).

- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body

The submitted materials include information which is subject to this provision. This information must be released unless it is made confidential by law. We have considered your confidentiality arguments under section 552.101 of the Government Code.

Information is excepted from disclosure by section 552.101 "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute. You contend that section 261.201 of the Family Code applies to the responsive information. In pertinent part this statute reads:

(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.

We are of the opinion that the responsive information does not consist of reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code, or in services provided as a result of such an investigation. Accordingly, the county may not withhold the requested information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also excepts information made confidential by judicial decision. Texas courts hold that information is protected by common law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We are of the opinion that information which would tend to identify a child who is the subject of a suit for protection of a child,

termination of parental rights, or similar litigation, is protected by the common law right of privacy. Where the context of the information would indicate that the child is the subject of such a suit, the names of all such children must be withheld under section 552.101 of the Government Code in conjunction with the common law right of privacy. The balance of the responsive information must be released.

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).

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 Hadassah Schloss at 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,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 142924

Encl: Submitted documents

cc: Mr. Gary W. Gates, Jr.  
2205 Avenue I, #117  
Rosenberg, Texas 77471  
(w/o enclosures)