



March 19, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-1068

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145047.

The City of El Paso (the "city") received a request for: (1) a "[c]omplete copy of Administrative case CP00-245," (2) "[a]ll recorded conversations, meetings, telephone calls, [in] reference [to] Administrative case CP00-245, Police criminal case 00-171164, or cause number 2000D04572," and (3) [a]ll memorand[a], correspondence, electronic mail, telephone messages or conversations and logs includ[ing] notes pertaining to administrative case CP00-245, Police criminal case 00-171164, or Cause number 2000D04752." You state that this office has previously ruled on the information in the police department's criminal investigatory file. Furthermore, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information.

We first note that you indicate that Exhibit F contains copies of statutes that may be "releasable." We note that information in the public domain by virtue of its publication must be released. You also indicate that Exhibit F contains "publicly filed documents." Under section 552.022 of the Government Code, information filed with a court is generally a matter of public record and may not be withheld from disclosure unless it is made confidential by other law. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

You first contend that this office has already ruled that the requested information in Exhibit B relating to the criminal investigation into an alleged injury to a disabled child must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We agree that a prior ruling, Open Records Letter No. OR2000-4820 (2000), requires you to withhold the information in the criminal investigation file under section 552.101 in conjunction with section 261.201 of the Family Code. We have enclosed a copy of this ruling for your convenience.

You next contend that portions of the internal affairs investigation are likewise confidential under section 261.201 of the Family Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 261.201(a) of the Family Code provides 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.

You state that parts of the internal affairs file included in Exhibit D “relate specifically to the matter of the criminal investigation and contain the same type of information as the criminal investigatory case.” Specifically, you state that “the information summarized in the case summary report, which begins on the third page of Exhibit ‘D,’ came directly from the criminal investigatory statements” Based on your argument and our review of the record, we agree that Exhibit D contains reports, records, communications, and working papers used and developed in a criminal investigation made under chapter 261 of the Family Code. We also note that some of the information in Exhibit F as well as the tape recorded meeting in Exhibit H reveal information from the criminal investigation made under chapter 261 and are likewise confidential. Therefore, you must withhold Exhibit H and portions of Exhibits D and F, which we have marked, under section 552.101 in conjunction with section 261.201 of the Family Code.¹

You also contend that the witness statements and summary reports contained in Exhibit D are excepted from disclosure under section 552.108. Although the summary report confidential under section 261.201 of the Family Code, the witness statements taken during the internal affairs investigation are not. Therefore, we address your section 552.108 argument with respect to the witness statements contained in Exhibit D. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the

¹We note, however, that if the Texas Department of Regulatory Services has created a file on this alleged abuse, the child’s parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the internal affairs investigation and the criminal investigation cover the same factual situation. Furthermore, you state that the criminal case is still pending. Based on your assertions and our review of the information, we conclude that the release of the witness statements would interfere with the detection, investigation, or prosecution of crime. 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) (court delineates law enforcement interests that are present in active cases).

We next turn to your other arguments under sections 552.101 and 552.117 of the Government Code with respect to the remaining information contained in Exhibits D, F, and G. Section 552.117(2) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former peace officers. Likewise, a social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We agree that Exhibits D, F, and G contain information that is generally protected under sections 552.101 and 552.117. However, the home address and telephone number, social security number, and family member information contained in Exhibits D, F, and G would only be excepted from disclosure under sections 552.101 and 552.117 in order to protect the requestor's privacy interests. Section 552.023(a) of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. See Open Records Decision No. 481 (1987) (determining that common law privacy does not provide basis for withholding information from its subject). Therefore, the requestor has a special right of access to the home address and telephone number, social security number, and family member information in Exhibits D, F, and G.

In summary, you must withhold Exhibits B and H, and the portions of Exhibits D and F that we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. You may withhold the witness statements contained in Exhibit D under section 552.108(a)(1). The remainder of the submitted information must be released to the requestor.

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 Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 145047

Encl: Submitted documents & OR2000-4820

cc: Mr. Joseph A. Barragan
6101 Via Fortuna
El Paso, Texas 79912
(w/ enclosure)