



September 10, 2001

Mr. Michael C. Hayes
Olson & Olson
Three Allen Center, Suite 3485
333 Clay Street
Houston, Texas 77002

OR2001-4021

Dear Mr. Hayes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151730.

The City of Friendswood (the "city"), which you represent, received a request for all police reports and calls made to a certain address from 1998 to the present. You indicate that you have released some basic information from two responsive incident reports. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 indicate that one responsive document relates to a report of alleged sexual assault against a child. Because this document relates to an allegation of child abuse, it is within the scope of section 261.201 of the Family Code. You indicate that the city has not adopted a rule that governs the release of this type of information. Based on your representations, we find that the document relating to the report of a sexual assault of a child is confidential pursuant to section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the city must withhold this document, which we have marked, from disclosure under section 552.101 of the Government Code as information made confidential by law.¹ Furthermore, because section 261.201(a) protects all "files, reports, communications, and working papers" related to an investigation of child abuse, the city must not release front page offense report information in cases of alleged child abuse.

You contend that the remaining information is excepted from disclosure under section 552.108(b)(2) of the Government Code. Section 552.108(b)(2) provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

....

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication

A governmental body claiming section 552.108(b)(2) must demonstrate that the internal record or notation at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the submitted incident reports pertain to cases that concluded in results other than a conviction or deferred adjudication. Therefore, we agree that section 552.108(b)(2) is applicable. Consequently, we find that you may withhold the submitted incident reports under section 552.108(b)(2), with the exception of the basic information you indicate you have already released. We note, however, that you have the discretion to release all or part of the incident reports that is not otherwise confidential by law. Gov't Code § 552.007.

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.

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).

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).

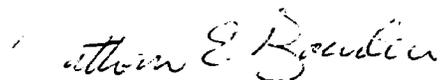
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. 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/sdk

Ref: ID# 151730

Enc: Submitted documents

c: Mr. Russell Bussey & Ms. Kristina Bussey
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(w/o enclosures)