



February 5, 2002

Chief Don Hatcher
Leander Police Department
Post Office Box 319
Leander, Texas 78646-0319

OR2002-0533

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158211.

The Leander Police Department (the “department”) received a request for two enumerated department incident reports. You claim that 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.

Initially, we note that one of the three reports submitted for our review was created on November 23, 2001, six days *after* the department received the subject information request dated November 15, 2001.¹ Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552’s purview if it does not exist when governmental body receives a request for it). Moreover, the requestor specified the case numbers and incident date of the reports she seeks. This report does not meet the requestor’s specification. Accordingly, this decision does not address the required public disclosure of that report.

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 as follows:

¹We refer to department report no. 25918.A51.

(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 information contained in the department's report no. 25763.A26 / case no. 210953, as well as the related information received by the department from the Texas Department of Protective and Regulatory Services, comprises a report of alleged or suspected abuse or neglect under chapter 261. Further, you do not indicate that the department has adopted a rule that governs the release of the information. Accordingly, such information is confidential under section 261.201(a) of the Family Code and, thus, must be withheld from disclosure pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).² Furthermore, because section 261.201(a) protects all "files, reports, communications, and working papers" related to an investigation of child abuse, the department must not release front page offense report information in cases of alleged child abuse. However, regarding the remaining information at issue contained in department incident report No. 25759, we find that it does not comprise nor reference any report of alleged or suspected abuse or neglect under chapter 261. Thus, it may not be withheld under section 552.101 in conjunction with section 261.201(a) of the Family Code. We next address your remaining claims of exception for the remaining report.

You claim generally that the information at issue is confidential under section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

²We note that if the investigation has been referred to the Department of Protective and Regulatory Services ("DPRS"), a parent may be entitled to access to DPRS records. *See* Fam. Code § 261.201(g).

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Upon review of department incident report No. 25759, we find that it does not concern juvenile conduct that occurred after September 1, 1997, nor do you explain the applicability of section 58.007 of the Family Code to the report. Therefore, we conclude that section 58.007 is inapplicable to department incident report No. 25759, and thus, it may not be withheld under section 552.101.

Finally, you claim generally that the information at issue is excepted from disclosure under section 552.108. 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 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). Although you state that the requested information relates to a pending criminal investigation, incident report No. 25759 recites that the status of the case is inactive, and that the incident is considered to be a civil matter. In addition, you fail to explain how release of the information contained in incident report No. 25759 would interfere with law enforcement. Thus, the department has failed to demonstrate the applicability of section 552.108 to incident report No. 25759. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706. Accordingly, the department may not withhold the information contained in department incident report No. 25759 under section 552.108, and it must therefore be released to the requestor.

In summary, the department must withhold, in its entirety, the information contained in the department’s report no. 25763.A26 / case no. 210953, together with the related information received by the department from the Texas Department of Protective and Regulatory Services, under section 552.101 of the Government Code in conjunction with section

261.201 of the Family Code. The department must release incident report No. 25759 to the requestor. The department need not release incident report No. 25918.A51 to the requestor as it is not responsive to the request.

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).

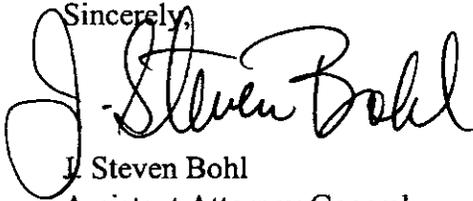
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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,

A handwritten signature in black ink that reads "J. Steven Bohl". The signature is written in a cursive style with a large, looped initial "J".

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 158211

Enc: Submitted documents

c: Ms. Jennifer Bove
16609 Spotted Eagle Drive
Leander, Texas 78614
(w/o enclosures)