



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 13, 2003

Mr. T. Daniel Santee, II  
Assistant City Attorney  
City of Abilene  
P. O. Box 60  
Abilene, Texas 79604

OR2002-6765A

Dear Mr. Santee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172862. This office issued Open Records Letter No. 2002-6765 on November 26, 2002. In that decision, we determined that the City of Abilene (the "city") did not state its claimed exceptions to disclosure and did not provide a copy of the specific information requested within the deadlines mandated by section 552.301 of the Government Code. *See* Gov't Code §§ 552.301(b), (e). Accordingly, we concluded that the responsive information must be released pursuant to section 552.302 of the Government Code. Since that ruling was issued, we have received your letter of December 3, 2002. You have provided a copy of the specific information requested and an affidavit stating that the city mailed the request for an attorney general decision within the ten business day deadline. *See id.* We have re-examined our ruling in Open Records Letter No. 2002-6765. This decision substitutes the decision issued on November 26, 2002.

The City of Abilene (the "city") received a request for offense report number 1256, pertaining to an incident that occurred on July 6, 2002 involving a named individual. 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. 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, audiotapes, videotapes and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You state, and the documents reflect, that the responsive information relates to an investigation of alleged child abuse. Thus, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that the responsive information 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 the responsive information from disclosure under section 552.101 of the Government Code as information made confidential by law. As we address the information in its entirety under section 552.101, we do not reach your claim under section 552.108 of the Government Code.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 172862

Enc: Submitted documents

c: Ms. Mary B. Adams  
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(w/o enclosures)