OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 9, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-6981

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173363.

The City of Fort Worth (the "city") received a request for all reports and calls for a particular address involving two named individuals. You advise that the city has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," which includes information made confidential by other statutes. Section 261.201 of the Family Code reads in part 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 that the submitted information relates to allegations of child abuse. Upon review of the information, we find that report numbers 95427953, 95428800, and 95428881 constitute reports used or developed in an investigation made under chapter 261 of the Family Code. You state that the city has not adopted any rules governing the release of this type of information. Therefore, these offense reports are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, you must withhold report numbers 95427953, 95428800, and 95428881 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.[1]

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Former section 51.14(d) provided that "law-enforcement files and records [concerning a child[2]] are not open to public inspection nor may their contents be disclosed to the public[.]" *See* Open Records Decision No. 644 at 2 (1996). Law enforcement records pertaining to conduct that occurred before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). Report number 93484051 concerns juvenile conduct that occurred prior to January 1, 1996. Thus, this report is confidential under former section 51.14(d) of the Family Code. The city must therefore withhold report number 93484051 in its entirety under section 552.101 of the Government Code as information made confidential by law.

---

[1] We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "department"), a parent who is a requestor may be entitled to access to the department's records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

> shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Fam. Code § 261.201(g).

[2] *See* former section 51.02(1) of the Family Code (defining "child" for purposes of title 3 of Family Code as person who is ten years of age or older and under seventeen years of age).

You request a "previous determination" from this office that would be applicable to future requests for information used or developed in an investigation of child abuse or neglect. We decline to issue such a previous determination at this time.

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).

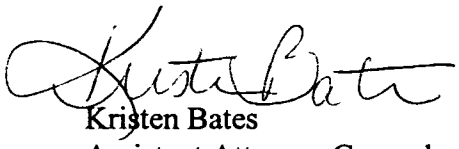
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 173363

Enc. Submitted documents

c: Mr. David Simmons
4903 Parrish Road
Fort Worth, Texas 76117
(w/o enclosures)