



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 5, 2003

Mr. Steven D. Monté
Assistant City Attorney
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2003-0757

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176495.

The Dallas Police Department (the "Department") received a request for the following offense report numbers: 0272732-L, 0827727-H, 0827612-H, 0827726-H, and 0827724-H. You assert that most of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the information you submitted and considered the exception you claim.

Initially, we note that you did not submit information responsive to offense report number 0827724-H. We assume the Department has released this report to the requestor. However, if the Department has not released this information, it must do so at this time. See Gov't Code §§ 552.301(a), .302.

Also, we address your burden under section 552.301 of the Government Code with respect to the request for information. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not

been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

In this case, the requestor submitted a request for information on November 14, 2002 as evidenced by both your acknowledgment in your letter to this office and the date stamped on the request form submitted by the requestor. You should have submitted your request for an attorney general opinion no later than December 2, 2002. This office received your faxed letter requesting an opinion on December 5, 2002. Therefore, we find that you did not request a ruling from this office within the prescribed period. *See Gov't Code § 552.301(b)* (requiring governmental body to ask for the attorney general's decision no later than the tenth business day after the date of receiving the written request). Consequently, we conclude that by submitting an untimely request for a decision from this office, the Department failed to comply with 552.301(b).

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. A government body must release information presumed public, unless it demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, when some other source of law makes the information confidential or the information impacts third party interests, a compelling interest exists. Open Records Decision No. 150 at 2 (1977). Because the application of section 552.101 of the Government Code qualifies as a compelling reason to overcome the presumption of openness, we will address your argument for withholding this information despite your failure to comply with section 552.301(b).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Though you assert the Department must withhold the submitted information under section 58.007 of the Family Code, our review of the documents reveals section 58.007 does not apply in this situation as the information involves adult, not juvenile, conduct.¹

However, section 261.201 of the Family Code reads in part as follows:

¹ *See* Tex. Fam. Code § 58.007(c) (protecting juvenile law enforcement records from public disclosure).

(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.

We believe the submitted documents consist of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume no such regulation exists. Given this assumption, the submitted information is 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 not release the submitted information 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

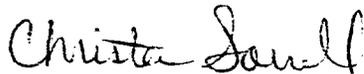
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 176495

Enc: Submitted documents

c: Mr. C. A. Tim Menchu
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Dallas, Texas 75209
(w/o enclosures)