



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 9, 2003

Ms. Julie Y. Fort
Abernathy, Roeder, Boyd, & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2003-2389

Dear Ms. Fort:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179095.

The City of Frisco (the "city"), which you represent, received a request for a particular offense report involving a specific individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

We begin by addressing the requestor's arguments. The requestor first contends that the city did not timely request a ruling from this office and so the submitted information should be released. Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information 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." (Emphasis added.) The present request was received by the city on January 16, 2003. January 20, 2003 was a national holiday honoring Dr. Martin Luther King, Jr. Therefore, the tenth *business day* following January 16 was January 31, 2003, and the city had until this date to request a ruling from this office. The city submitted its request on January 30, 2003. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail or interagency mail). We therefore conclude that the city was timely in requesting a ruling from this office. We also note that, even if the city had in fact failed to comply with section 552.301 of the Government Code, section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness that would arise under section 552.302 of the Government Code. *See* Open Records Decision No. 150

(1977) (presumption of openness overcome by a showing that information is made confidential by another source of law or affects third party interests).

The requestor also contends that the submitted information is “no longer confidential” because “the State of Texas has tried [the requestor’s] client in open court for the offense contained in the report with the victim testifying. The report should not contain any information that has not already been disclosed to the public during the trial.” However, this office has previously noted that “what information can or cannot be introduced during a trial and what information can or cannot be released to the public under the [predecessor to the Public Information] Act are two entirely different issues.” Open Records Decision No. 416 at 7 (1984) (predecessor statute); *cf. Cornyn v. City of Garland*, 994 S.W.2d 258, 265 (Tex. App.—Austin 1999, no pet.) (alleged prior disclosure of information in course of discovery did not foreclose possibility of raising litigation exception in response to subsequent request); Open Records Decision No. 579 (1990) (exchange of information among litigants in “informal” discovery is not “voluntary” release of information for purposes of statutory predecessor). Furthermore, section 552.007 of the Government Code provides that, if a governmental body receives a request for information that it has previously voluntarily released to one member of the public, the governmental body may not withhold such information on the basis of any *discretionary* exception to disclosure. *See* Gov’t Code § 552.007 (governmental body has discretion to release any information unless “expressly prohibited by law or the information is confidential under law”); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, even if we assumed that the requestor were correct in his assertion that the entirety of the report was previously released, such a situation would not prevent the city from now asserting that the information is confidential by law.

We turn now to the submitted information and the city’s arguments. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses confidentiality provisions such as section 261.201(a) of the Family Code, which provides:

(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.

We have reviewed the submitted information and find that it constitutes files, records, communications, and working papers used or developed by the city's police department in an investigation made under chapter 261 of the Family Code or in providing services as a result of such an investigation. You do not inform us that the city's police department has adopted a rule that governs the release of this type of information. We therefore assume that no such rule exists. Given this assumption, we conclude that the submitted information is confidential under section 261.201 of the Family Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). As we are able to make this determination, we need not address the city's remaining arguments.

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).

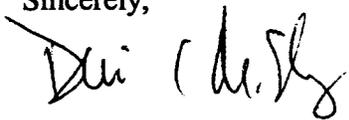
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 179095

Enc. Submitted documents

c: Mr. Steven R. Green
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(w/o enclosures)