



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 2, 2003

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

OR2003-4536

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# 183757.

The City of Fort Worth (the "city") received a request for information pertaining to a specified person. You state that the requestor verbally amended her original request to be one for a specified offense report. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). In addition, section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and (4) a copy of the specific information requested or representative

samples of it, if a voluminous amount of the information was requested, labeled to indicate which exceptions apply to which parts of the information. *See* Gov't Code § 552.301(e).

Although you state that the requestor verbally amended her original request on April 17, 2003, we note that a governmental body that requests an attorney general decision with respect to requested information that it seeks to withhold from disclosure must request that decision of the attorney general within ten business days after the date of the governmental body's receipt of the *written* request for information. *See* Gov't Code § 552.301. However, if a governmental body is unclear as to what information has been requested of it by a requestor, the governmental body may ask the requestor to clarify the request. *See* Gov't Code § 552.222. You do not inform us that the city requested clarification from the requestor concerning the original request for information. Accordingly, the ten business day deadline that the city was required to abide by in requesting this decision from us was not tolled on the date that the requestor verbally amended her request. *See* Gov't Code § 552.301(b); Open Records Decision No. 663 at 5 (1999) (providing that ten-day period is tolled during the clarification process). Consequently, the city was required to request a decision from our office as to whether any portion of the requested information could be withheld from disclosure on or before April 23, 2003 and submit the items required to be submitted to us pursuant to section 552.301(e) on or before April 30, 2003. However, you do not request a decision from us regarding the requested information until April 28, 2003 and did not submit some of the items required to be submitted to us pursuant to section 552.301(e) until May 5, 2003. Accordingly, we must conclude that the department failed to comply with the procedural requirements of section 552.301 in requesting this decision from us.

Because the city failed to comply with the procedural requirements of section 552.301 in requesting this decision from us, the requested information is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The city must demonstrate a compelling interest in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Since the city claims that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code, we will address the city's claim.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code.¹ We note that

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

(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.

Fam. Code § 261.201(a). Based on our review of your arguments and the submitted information, we find that the entirety of this information pertains to a report and investigation of alleged or suspected child abuse or neglect under chapter 261. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). We assume that the city's police department has not adopted a policy that would allow for the release of this information in this instance. Accordingly, we conclude that the city must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

Finally, you request that we issue the city a previous determination that would allow it to withhold files, reports, records, communications and working papers used or developed in an investigation of child abuse or neglect in response to future requests for such information without the necessity of seeking a decision from us as to the public availability of the information. 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 183757

Enc. Submitted documents

c: Ms. Deltima Lindo
c/o Tamara Pitts
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102
(w/o enclosures)