



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2004

Mr. Chris Settle  
Assistant City Attorney  
Criminal Law & Police Division  
City of Dallas  
1400 South Lamar Street #300A  
Dallas, Texas 75215-1801

OR2004-4200

Dear Mr. Settle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202271.

The Dallas Police Department (the "department") received a request for offense report number 35127-N, and all reports pertaining to a specified apartment complex in the City of Dallas generated between February 1, 2004 and March 10, 2004. You seek to withhold two responsive offense reports, but you do not indicate that you seek to withhold the offense report specified in the request. As you have not submitted offense report number 35127-N for review, nor raised any exceptions to disclosure for this report, we presume the department has released offense report number 35127-N to the requestor. If not, the department must release offense report number 35127-N, and any additional responsive information other than the submitted reports, to the requestor immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). You contend that portions of the submitted information, pertaining to service numbers 0113677-N and 0079006-N, are 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and

encompasses information made confidential by other statutes. 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.

Fam. Code § 261.201. The documents reflect that the submitted information pertaining to service number 0113677-N was used or developed in an investigation of suspected child abuse. Thus, we find that the information pertaining to service number 0113677-N is within the scope of section 261.201 of the Family Code. We have no indication that the department has adopted a rule that governs the release of this type of information, and we therefore assume that no such regulation exists. Given that assumption, we determine that the submitted information pertaining to service number 0113677-N is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this information from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Upon review of your comments and the remaining submitted information, we find that portions of offense report number 0079006-N are protected by common-law privacy. We have marked the information in offense report number 0079006-N that the department must withhold under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the submitted information pertaining to service number 0113677-N from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We have marked the information in offense report number 0079006-N that the department must withhold under section 552.101 in conjunction with common-law privacy. Based on these findings, we need not reach your other arguments against disclosure. The remainder of offense report number 0079006-N must be released 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 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,

A handwritten signature in black ink, appearing to read "D. Saldivar", with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 202271

Enc: Submitted documents

c: Ms. Shawna Sanchez  
11611 Ferguson Road  
Dallas, Texas 75228  
(w/o enclosures)