



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2004

Mr. Marcus R. Norris
City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2004-4252

Dear Mr. Norris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202514.

The Amarillo Police Department (the "department") received a request for information regarding two identified case numbers and an arrest. You have provided the requestor with some of the requested information. You state, however, that there has been a prior determination on the class of records at issue in the remaining requested information. In the alternative, you claim that the department is not required to comply with the request under section 552.028 of the Government Code. Additionally, you claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the arguments you make and reviewed the submitted information.

You contend that the department has received a previous determination regarding records encompassing the sexual assaults of children. We disagree. Section 552.301(a) of the Public Information Act (the "Act") exempts a governmental body from the requirement of asking the attorney general for a decision in order to withhold requested information from disclosure if the attorney general has issued a previous determination about whether the information falls within a raised exception. This means that a governmental body need not request another decision from the attorney general under section 552.301(a) if the governmental body previously requested and received a determination from the attorney general concerning the precise information at issue in the pending request. The attorney general is authorized to determine what constitutes a previous determination. *Houston Chronicle Publ'g Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989). The information at issue here has not been the subject of a previous determination. Thus, as the department cannot rely on a previous determination for the information now at issue, the department is not excused from complying with the requirements of section 552.301.

You also contend that the department is not required to comply with the request under section 552.028. Section 552.028 of the Government Code provides in relevant part that “a governmental body is not required to accept or comply with a request for information from: (1) an individual who is imprisoned or confined in a correctional facility; or (2) an agent of that individual, other than that individual’s attorney when the attorney is requesting information that is subject to disclosure under this chapter.” Gov’t Code § 552.028(a). You inform us that the “request at issue is from the inmate’s father, which the [department] concludes is an agent for the inmate, in the absence of any contrary intention.” As there is no indication that the inmate’s father is acting on his behalf, we disagree that section 552.028 applies. Therefore, the department must comply with the request.

Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov’t Code § 552.301(a), (b). Within fifteen business days of receiving the request, the governmental body must submit to this office (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 or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this case, you note that the department received the initial request for information on August 12, 2003. However, you did not request a ruling until March 23, 2004. Thus, we find that the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov’t Code § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments concerning this exception.

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 information at issue was used or developed in an investigation of a sexual assault on a child. Thus, we find that the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information 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 the submitted information from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.

Finally, you request that this office issue a previous determination to categorically encompass requests regarding records of sexual assaults of children. We decline to issue such a determination at this time. Accordingly, 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 202514

Enc. Submitted documents

c: Mr. Otto Mueller
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(w/o enclosures)