



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2004

Ms. Rosemary M. Marin
Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C.
P. O. Box 99123
El Paso, Texas 79999-9123

OR2004-9162

Dear Ms. Marin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 211662.

The Ysleta Independent School District (the "district"), which you represent, received a request for information related to an investigation into allegations of sexual assault. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

¹We note that, in your August 19, 2004 letter to this office, you also claimed that the requested information is excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code. Because you have not submitted arguments explaining how those exceptions are applicable, we assume you have withdrawn your claim that they apply to any of the submitted information. Additionally, you claim that the requested information is excepted from disclosure pursuant to section 552.022 of the Government Code. Section 552.022 provides a list of eighteen categories of information that are expressly public and may not be withheld unless confidential under other law. Thus, section 552.022 is not an exception to disclosure under the Act and does not provide a basis for withholding information from 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Thus, documents used or developed in an investigation of child abuse or neglect are within the scope of section 261.201 of the Family Code. You explain the submitted documents have been forwarded to the El Paso Police Department and the Child Protective Services Division of the Department of Family and Protective Services. Accordingly, the information is made confidential by section 261.201 of the Family Code as files, reports, records, communications, and working papers used or developed in an investigation under chapter 261. As such, the submitted information must be withheld under section 552.101 as information made confidential by law. As our ruling is dispositive, we need not consider your other arguments against disclosure.

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

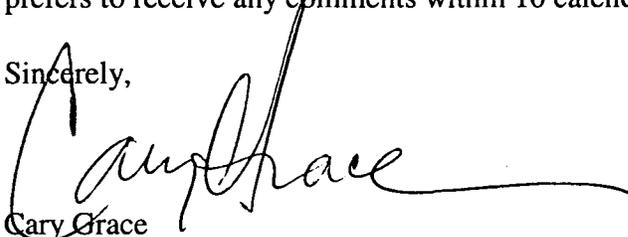
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 211662

Enc. Submitted documents

c: Mr. Joe A. Spencer
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(w/o enclosures)