



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 10, 2005

Mr. Charles D. Olson  
Haley Davis, P.C.  
510 North Valley Mills Drive, Suite 600  
Waco, Texas 76710

OR2005-04011

Dear Mr. Olson:

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# 223832.

The Bellmead Police Department (the "department"), which you represent, received a request for a specified case number. 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the requested information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. Section 261.201 makes confidential reports and other materials concerning an investigation under chapter 261 of an allegation of child abuse or neglect. Thus, the requested information is generally confidential under section 261.201. However, in this instance, the requestor is a representative of the Department of Family and Protective Services. Therefore, we find that the requestor has a special right of access to this information. *See* Family Code § 261.105(a) (requiring local or state law enforcement agency to refer chapter 261 reports to the Department of Protective and Regulatory Services); *see also* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”). Accordingly, we conclude in this instance that the department may not withhold the requested information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Consequently, the department must release the entirety of the submitted information to the requestor.<sup>1</sup> As our ruling is dispositive, we do not address your remaining claim.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

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<sup>1</sup>We note, however, that because the requested information is confidential in its entirety with respect to the general public, the department should again request a ruling from our office if it receives a future request for this information from an individual other than the requestor.

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); *Tex. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 223832

Enc. Submitted documents

c: Ms. Thea G. Burns, M.A.  
CPSSIV  
801 Austin Avenue  
Waco, Texas 76701  
(w/o enclosures)