



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2005

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2005-06578

Dear Mr. Ray:

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# 228583.

The Longview Police Department (the "department") received a request for information relating to 911 calls involving a specified address and time interval. You indicate that the department has released some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We initially note that you failed to comply with section 552.301 of the Government Code in submitting some of the information at issue. *See* Gov't Code §§ 552.301(e)(1)(D), .302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You claim, however, that the information in question is confidential by law under section 552.101. Because your claim under this exception can provide a compelling reason for non-disclosure under section 552.302 of the Government Code, we will address your arguments under section 552.101 with regard to the information that was not timely submitted. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We agree that the information that you seek to withhold under section 261.201 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. Thus, the information in question is confidential under section 261.201. You indicate that the department has not adopted any rule that permits the release of this type of information in this instance. We therefore conclude that the information encompassed by section 261.201 of the Family Code must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).¹

Next, we address your claim under section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007(c) provides as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

¹As we are able to make this determination, we need not address your claims under sections 552.103 and 552.108 of the Government Code.

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997.² The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. You have not demonstrated, and the information that you seek to withhold under section 58.007 does not otherwise clearly reflect, that any of the information in question relates to a child for the purposes of section 58.007. We therefore conclude that the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You also raise section 552.101 in conjunction with section 771.061 of the Health and Safety Code. Section 771.061 makes confidential “[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service” and “[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service.” Health & Safety Code § 771.061(a). You inform us that the City of Longview (the “city”) provides computerized 9-1-1 service. You have marked information in one of the remaining documents that you claim is confidential under section 771.061(a). We note that the other remaining documents contain similar information. Based on your representations, we agree that to the extent that the remaining documents contain information that was required to be furnished to the city by a telecommunications service provider or that is contained in an address database used in providing computerized 9-1-1 service, such information is confidential under section 771.061 of the Health and Safety Code. *See also* Open Records Decision No. 661 at 1-2 (1999). However, information contained in the remaining documents that was not required to be furnished to the city by a telecommunications service provider and that is not contained in an address database used in providing computerized 9-1-1 service is not confidential under 771.061. To the extent that the remaining documents contain information that is confidential under 771.061, such information must be withheld from disclosure under section 552.101 of the Government Code.

²*See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996).

In summary: (1) the department must withhold the submitted information that is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (2) information contained in the remaining documents that was required to be furnished to the city by a telecommunications service provider or that is contained in an address database used in providing computerized 9-1-1 service must be withheld under section 552.101 in conjunction with section 771.061 of the Health and Safety Code. The rest of the submitted information is not excepted from disclosure and must be released.

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).

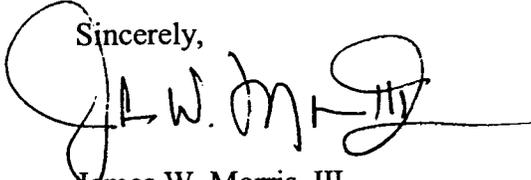
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 228583

Enc: Submitted documents

c: Ms. Katherine Sayre
Longview News-Journal
P.O. Box 1792
Longview, Texas 75606
(w/o enclosures)