



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2005

Ms. Janis Kennedy Hampton  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2005-08664

Dear Ms. Hampton:

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# 232852.

The City of Bryan (the "city") received a request from the Texas Department of Criminal Justice ("TDCJ") for information relating to an arrest for sexual assault of a child. 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 have reviewed the information you submitted. We also received correspondence from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

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 another statute makes confidential. 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 [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). Because the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, we find that the information falls within the scope of section 261.201(a). We therefore conclude that the submitted information is confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 261.201 provides, however, for the disclosure of confidential information if the release of the information is consistent with the Family Code and applicable federal or state law. *See* Fam. Code § 261.201(a). In this instance, the request for information was made by a representative of the Parole Division of TDCJ. The requestor informs this office that TDCJ seeks access to the submitted information for the purpose of determining the suitability of a TDCJ inmate for possible parole. The requestor relies, in part, on section 508.311 of the Government Code, which provides as follows:

On request of a member of the board or employee of the board or department, a public official of the state, including a judge, district attorney, county attorney, or police officer, who has information relating to an inmate eligible for parole shall send to the department in writing the information in the official's possession or under the official's control.

Gov't Code § 508.311. The word "department" in section 508.311 means TDCJ. *See id.* § 491.001(a)(3) (defining "department" for purposes of Gov't Code tit. 4 subtit. G). Thus, section 508.311 of the Government Code requires that information relating to an inmate eligible for release on parole be provided to TDCJ. We find that section 508.311 constitutes an "applicable federal or state law" for purposes of section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(a). We also find that the release of the submitted information in this instance is not inconsistent with the purposes of the Family Code. *See also* 40 T.A.C. § 700.203(a)(1) (authorizing release of information made confidential under Fam. Code § 261.201(a) to local, state, or federal government official when specifically required by law or when deemed necessary for protection and care of child). We therefore conclude that the city must release the submitted information to this requestor in accordance with section 508.311 of the Government Code. We note that the release of this information under these specific circumstances is not a disclosure of confidential information to the public for purposes of section 552.352 of the Government Code or a selective disclosure of information

for purposes of section 552.007. *See also* Open Records Decision No. 655 at 8 (1997) (information excepted from public disclosure under Gov't Code ch. 552 may be transferred between agencies without destroying its confidential character if agency to which information is transferred has authority to obtain it).

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).

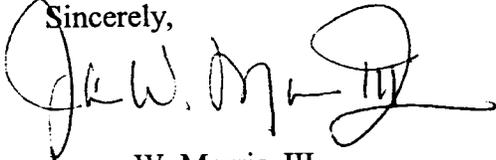
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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 fluid and cursive, with a large initial "J" and a long, sweeping underline.

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

JWM/sdk

Ref: ID# 232852

Enc: Submitted documents

c: Mr. Philip Doughty  
Central Region Institutional Parole Office  
Texas Department of Criminal Justice  
1650 7<sup>th</sup> Street  
Huntsville, Texas 77320  
(w/o enclosures)