ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2006

Ms. Cary Grace
Assistant City Attorney
City of Austin - Law Department
P. O. Box 1088
Austin, Texas 78767-2268

OR2006-06604

Dear Ms. Grace:

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# 252019.

The Austin Police Department (the "department") received a request for record regarding a named person. You claim that the submitted 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that is made confidential by statute. 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.

Fam. Code § 261.201(a). Here, you state that the submitted information consists of a report used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code § 261.001(1) (defining "abuse" for the purposes of chapter 261 of the Family Code). You also state that the department has not adopted a rule that governs the release of this type of information. Based on your representations, we find that the information is within the scope of section 261.201 of the Family Code. Generally all of information pertaining to an abuse or neglect investigation is confidential under section 261.201. However, section 261.201 allows for the disclosure of this type of information to certain entities for "purposes consistent with [Family Code] and applicable federal or state law." *See id.* § 261.201(a). In this instance, the requestor, the Texas Department of Family and Protective Services (the "DFPS"), states that the information is being requested for a licensing study. However, the DFPS does not cite to an applicable statute or federal law that grants the agency a right of access to this information for a licensing study. Accordingly, the submitted information is confidential in its entirety pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.[1] *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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

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[1]Because this ruling is dispositive, we need not address your remaining argument.

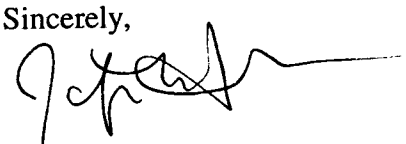
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 252019

Enc. Submitted documents

c: Ms. Lena Nelson
Texas Dept. of Family and Protective Services
1400 Summit Drive, Ste. 100, Unit 10, Mail Code (016-5)
Austin, Texas 78728
(w/o enclosures)