



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 11, 2007

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2007-08769

Dear Ms. Middlebrooks:

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# 283665.

The Dallas Fire Department (the "department") received a request for all notes, audio, and video recordings relating to a specific interview. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that you have submitted information that is not responsive. The requestor specifically asks for notes, audio, and video recordings taken by the department which relate to a specified interview. Any additional information is not responsive. We have marked the non-responsive information, which need not be released. Moreover, we do not address such information in this ruling.

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, we must address the department's obligations under the Act. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) of the Government Code requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. Gov't Code § 552.301(e)(1)(A)-(D). You state that the department received this request on April 23, 2007. However, you did not provide the representative sample of information as required by section 552.301(e) until May 15, 2007. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

Because the department did not comply with section 552.301(e) in requesting this decision, the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. See *Open Records Decision Nos. 630 at 3 (1994)*, *325 at 2 (1982)*. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See *Gov't Code § 552.007*; *Open Records Decision Nos. 665 at 2 n.5 (2000)* (discretionary exceptions generally), *663 at 5 (1999)* (waiver of discretionary exceptions), *177 at 3 (1977)* (statutory predecessor to section 552.108 subject to waiver). Nevertheless, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. See *Open Records Decision No. 586 at 2-3 (1991)*. You inform us that the Dallas County District Attorney's Office (the "district attorney") asserts a law enforcement interest in the information at issue. Therefore, we will consider whether the department may withhold that information on behalf of the district attorney under section 552.108. Additionally, because the department's claim under section 552.101 can provide a compelling reason for non-disclosure, we also will consider the applicability of that exception.

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, audiotapes, videotapes, 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). The requested information was used or developed in an investigation under chapter 261 of the Family Code and is thus within the scope of section 261.201 of the Family Code. *See* Fam. Code § 261.001(1), (4) (defining “abuse” and “neglect” for the purposes of chapter 261 of the Family Code). Thus, the requested information is confidential pursuant to section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Accordingly, the department must withhold the requested information under section 552.101 of the Government Code as information made confidential by law. As our ruling is dispositive, we need not address your 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, 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 that reads "Nikki Hopkins". The signature is written in a cursive, flowing style.

Nikki Hopkins  
Assistant Attorney General  
Open Records Division

NH/mcf

Ref: ID# 283665

Enc. Submitted documents

c: Ms. Leah M. Harbor  
Assistant Dallas County Public Defender  
133 North Industrial Boulevard, 9<sup>th</sup> Floor, LB 2  
Dallas, Texas 75207-4313  
(w/o enclosures)