



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2008

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2008-04109

Dear Mr. Weir:

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# 310083.

The San Antonio Police Department (the "department") received a request for information relating to 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 have reviewed the information you submitted.

We first note that the department failed to comply with section 552.301 of the Government Code in requesting this decision. 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(b) requires a governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code § 552.301(b)*. If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id. § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Thus, because the department did not comply with its ten-business-day deadline under section 552.301(b), the submitted information is presumed to be public under section 552.302.¹ 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)*. Because your claims under section 552.101

¹You inform us that the department received the request for the submitted information on February 20, 2008; therefore, the department's deadline under section 552.301(b) was March 5. The envelope in which you submitted your request for this decision is postmarked March 10.

of the Government Code can provide compelling reasons for non-disclosure, we will consider your arguments.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(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 find that 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, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the submitted information is confidential under section 261.201 of the Family Code and must be withheld from disclosure on that basis under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). As we are able to make this determination, we need not address your other claim under section 552.101.

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

²We note that if the Texas Department of Family and Protective Services has created a file on this case, the child's parent(s) may have the statutory right to review the file. *See* Fam. Code § 261.201(g).

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

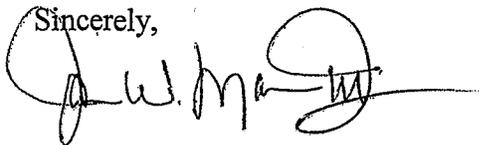
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 'James W. Morris, III', with a stylized flourish at the end.

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

JWM/ma

Ref: ID# 310083

Enc: Submitted documents

c: Mr. Robert Pizzurro
P.O. Box 461142
San Antonio, Texas 78246
(w/o enclosures)