



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2008

Ms. Mindy Ward
City Attorney
City of San Angelo Legal Department
P.O. Box 1751
San Angelo, Texas 76902

OR2008-05873

Dear Ms. Ward:

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# 310851.

The San Angelo Police Department (the "department") received a request for incident reports occurring at a specified address on two named dates. We note that you have not submitted for our review requested for incident report number 07-21272 or any arguments pertaining to this report. To the extent the requested incident report existed on the date the department received the request, we assume you have released it to the requestor. If you have not released it, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).* 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.

As a preliminary matter, we note that you have redacted Texas motor vehicle information from the submitted documents. We advise that section 552.301 of the Government Code requires a governmental body to submit responsive information that is not subject to a previous determination in a manner that permits this office to review the information. *See Gov't Code § 552.301(e)(1)(D).* Therefore, the department risks non-compliance with section 552.301 if it fails to submit responsive information in non-redacted form. Such non-compliance can result in a conclusion from this office that the information at issue must be released. *See Gov't Code §§ 552.006, .301, .302.* This office has not issued a previous

determination allowing the department to withhold Texas motor vehicle information without the necessity of requesting an attorney general decision as to such information. With respect to future requests for an open records decision, therefore, we advise the department to submit responsive documents in non-redacted form. *See id.* § 552.3035 (attorney general may not disclose to requestor or public any information submitted to attorney general under section 552.301(e)(1)(D)).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which 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 note that the submitted incident report was developed and used by the department in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for the purposes of chapter 261 of the Family Code). You do not indicate that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted report is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the submitted report in its entirety from disclosure under section 552.101 of the Government Code as information made confidential by law.

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 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).

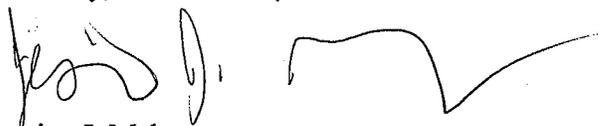
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 310851

Enc. Submitted documents

c: Ms. Annette White
3406 Wildewood Drive, #174
San Angelo, Texas 76904
(w/o enclosures)
