



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 9, 2008

Mr. Samuel D. Hawk  
Assistant City Attorney  
Criminal Law and Police Section  
1400 South Lamar  
Dallas, Texas 75215

Ms. Sylvia McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
1400 South Lamar  
Dallas, Texas 75215

OR2008-09282

Dear Mr. Hawk and Ms. McClellan:

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# 315148.

The Dallas Police Department (the "department") received two requests from the same requestor for four specified incident reports. 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.

Initially, we note, and you acknowledge, that the department has not complied with the time period prescribed by section 552.301(b) of the Government Code in submitting your request for a decision to this office. Under section 552.301, if a governmental body seeks to withhold the requested information from public disclosure, it is required to seek a ruling from this office within ten business days of receiving the request unless this office had issued a previous determination allowing the requested information to be withheld without the necessity of requesting a decision. Gov't Code § 552.301(a), (b). In this instance, we note

that report number 0865533-R is the subject of a previous determination. However, the department failed to comply with section 552.301 with respect to the remaining reports. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the department's argument against disclosure of the reports not subject to the previous determination under this exception. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

Next, as we noted above, report number 0865533-R was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-10427 (2007). In Open Records Letter No. 2007-10427, we ruled that report number 0865533-R must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on that ruling as a previous determination and withhold report number 0865533-R in accordance with Open Records Letter No. 2007-10427. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 section encompasses information protected by other statutes. Section 552.101 of the Government Code encompasses section 261.201(a) of the Family Code, which provides as follows:

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). You claim that the remaining reports were used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on your representations and our review, we find that report numbers 0974252-R and 0728899-T are within the scope of 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. Given that assumption, report numbers 0974252-R and 0728899-T are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup>

However, report number 0103949-V is a report on a child custody issue between two adults. You do not explain, nor do the documents reflect, that the department actually used or developed this information in an investigation under chapter 261. Thus, you have failed to demonstrate that report number 0103949-V is confidential under section 261.201(a)(2) of the Family Code.

You also claim, however, that report number 0103949-V is confidential under the doctrine of common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. In this instance, you state that report number 0103949-V is protected by common-law privacy. However, you have not made any specific argument explaining, nor can we discern from our review of the submitted information, how any portion of report number 0103949-V is protected by common-law privacy. As you raise no other arguments against the disclosure of report number 0103949-V, it must be released to the requestor.

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<sup>1</sup>We note that if the Texas Department of Family and Protective Services has created a file on this case, the child’s parent, managing conservator, or legal representative may have the statutory right to review the file. *See* Fam. Code § 261.201(g).

In summary, the department must continue to withhold report number 0865533-R in accordance with our previous ruling in Open Records Letter No. 2007-10427. The department must withhold report numbers 0974252-R and 0728899-T under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Report number 0103949-V must be released to the requestor.

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). If the governmental body does not file suit over 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).

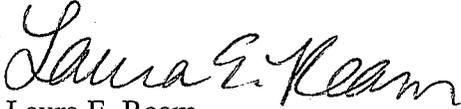
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/mcf

Ref: ID# 315148

Enc. Submitted documents to Mr. Hawk

c: Ms. Belinda Hughes  
302 Lillian Street  
Dallas, Texas 75211  
(w/o enclosures)