



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2008

Mr. John R. Adame
Director, Administrative Legal Services
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2008-11733

Dear Mr. Adame:

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# 319786.

The Texas Department of Family and Protective Services (the "department") received two requests for e-mails sent to or received by department employees pertaining to the raid of the YFZ Ranch in El Dorado, Texas. The second request also seeks specified video interviews. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹ We have also received comments from one of the requestors. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially we note that a portion of the communications responsive to the requests at issue were the subject of a previous ruling by this office. In Open Records Letter No. 2008-08616

¹We 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.

(2008), this office concluded that the e-mails at issue in that ruling were excepted from disclosure under section 552.108(a)(1). 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 the communications at issue in accordance with Open Records Letter No. 2008-8616. *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).

You assert that the remaining information is excepted from disclosure under section 552.101 of the Government Code, which excepts from public 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. Section 261.201(a) 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). You state that the submitted information pertains to investigations of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for the 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). We note that in Open Records Letter 2003-05590 (2003), this office issued a previous determination allowing the department to withhold records concerning an investigation of abuse or neglect under section 552.101 in conjunction with section 261.201 of the Family Code without first seeking a decision from this office. Based on your representations and our review, and pursuant to Open Records Letter 2003-05590, we conclude that you must continue to rely on that previous determination, and withhold the submitted information under section 552.101 in

conjunction with section 261.201 of the Family Code. Further, for future requests under the Act, so long as the elements of law, fact, and circumstances do not change, the department is not required to request a ruling from this office to withhold records concerning an investigation of an allegation of abuse or neglect under chapter 261 of the Family Code.

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).

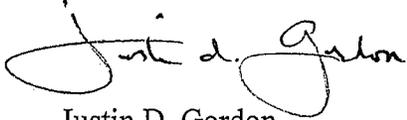
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Justin D. Gordon". The signature is fluid and cursive, with the first name "Justin" and last name "Gordon" clearly distinguishable.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 319786

Enc. Submitted documents

c: Leigh Dethman
Desert News
P. O. Box 1257
Salt Lake City, Utah 84110
(w/o enclosures)

Nate Carlisle
Brooke Adams
The Salt Lake Tribune
90 South 400 West, Suite 700
Salt Lake City, Utah 84101
(w/o enclosures)