



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2009

Ms. Teresa J. Brown
Senior Open Records Specialist
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2008-13950A

Dear Ms. Brown:

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# 331687.

This office issued Open Records Letter No. 2008-13950 (2008) on October 10, 2008. In that ruling, the Plano Police Department (the "department") asserted that basic information pertaining to the responsive report was confidential under section 552.101. However, because the department failed to submit any portion of the report at issue, we had no basis to conclude that this section was applicable to the report. Accordingly, we determined, among other things, that the basic information from the report must be released to the requestor. The department has now submitted the report at issue and asks this office to correct Open Records Letter No. 2008-13950. We have considered the department's request and will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on October 10, 2008. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Act).

The department received four requests for information pertaining to a specified incident, including video of the incident. You claim that 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 information.

Initially, we note, and you acknowledge, that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(e)(1)(d) (requiring governmental body to submit copy of the requested information to Attorney General no later than fifteen business days after receiving request for information). A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released. *See id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). In this instance you claim that the information you submitted after the deadline required by section 552.301(e)(1)(d) is confidential under section 552.101 of the Government Code. Because section 552.101 can provide a compelling reason to withhold information, we will address your argument against disclosure of this information.

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 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, audiotapes, videotapes, 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 requested information was developed and used in an investigation of alleged or suspected child abuse. *See* Fam. Code. §§ 261.001(1) (defining "abuse" for the purposes of chapter 261 of the Family Code). Based upon your representation and our review, we conclude that this information is within the scope of section 261.201 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 this assumption, we conclude that the requested information is confidential pursuant to section 261.201 of the Family Code, and thus, it be withheld in its entirety pursuant to section 552.101 of the Government Code. Because our determination on this issue is dispositive, we need not address your remaining argument 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 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).

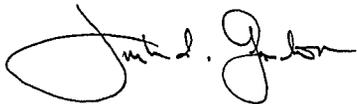
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 331687

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Mr. Richard Zlotowitz
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(w/o enclosures)

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