



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2008

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
Killeen Police Department  
402 North Second Street  
Killeen, Texas 76541-5298

OR2008-14398

Dear Ms. Mapes:

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# 325864.

The City of Killeen (the "city") received a request for information related to two specified incidents. You state that some responsive information has been released to the requestor. You claim that the remaining 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 that a portion of the submitted information is subject to a previous ruling issued by this office. On September 8, 2008, this office issued Open Records Letter No. 2008-12363 (2008), in which we ruled that, with the exception of basic information that must be released, the city may withhold report number 08-010648 under section 552.108 of the Government Code. You do not inform us that the pertinent facts and circumstances have changed since the issuance of that prior ruling. Thus, we determine that the city may continue to rely on our ruling in Open Records Letter No. 2008-12363 as a previous determination and withhold or release report number 08-010648 in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a

ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). To the extent that the submitted information was not addressed in our prior ruling, we will address your claims for exception from disclosure.

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. 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 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, 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); *see also id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). Case number 07-009462 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is generally confidential and not subject to public release under the Act. *See id.* Because you have not indicated that the city has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, the information in case number 07-009462 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> As we are able to make this determination, we do not address your remaining arguments regarding this information.

In summary, the city may continue to rely on our ruling in Open Records Letter No. 2008-12363 as a previous determination and withhold or release report number 08-010648 in accordance with that decision. The information in case number 07-009462 must be withheld

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<sup>1</sup>We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g)

under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup>

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

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining claim.

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 "Cindy Nettles". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 325864

Enc. Submitted documents