ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2008

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

OR2008-15296

Dear Mr. Hawk:

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# 327565.

The Dallas Police Department (the "department") received a request for several specified reports. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted one of the requested incident reports. Therefore, to the extent offense report No. 186086-V existed when the department received the present request, we assume that it has been released. If such information has not been released, then it must be released 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).

[1]Although you raise section 552.108 of the Government Code, you provide no supporting arguments explaining why this exception is applicable to the information at issue. Accordingly, we find that the department has waived its claim under this exception. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

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. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand that the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone number and address of a 911 caller that you seek to withhold. To the extent that the marked information was furnished by a 911 service supplier, we agree that it must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 also encompasses information protected by other statutes. Section 261.201(a) of the Family Code 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, 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). Because report Nos. 0131990-V and 0131991-V were used or developed in an investigation into alleged child abuse, the information is within the scope of section 261.201. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261). You have not indicated the department has adopted a rule governing the release of this type of information, and we therefore assume no such rule exists. Given this assumption, we conclude that report Nos. 0131990-V and 0131991-V, which you have marked, are confidential in their entirety 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 this information from disclosure under section 552.101 of the Government

Code as information made confidential by law.[2] As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, to the extent that the information was furnished by a 911 service supplier, the department must withhold the telephone number and address that you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Also, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining submitted information 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).

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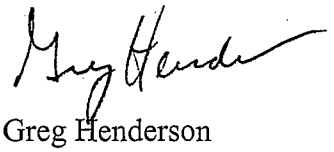
[2]We note that the requestor, as a parent of the child allegedly abused, may have a right of access to certain records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules: shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if DFPS has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. Fam. Code § 261.201(g).

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/jh

Ref: ID# 327565

Enc. Submitted documents