



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 2, 2009

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

OR2009-17071

Dear 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# 362857 (DPD Request # 2009-5706).

The Dallas Police Department (the "department") received a request for all training, disciplinary, and investigative records related to a specified officer. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the request for all training records of the officer. To the extent information regarding this portion of the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, you must do so 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).

Next, we must address the department's obligations under section 552.301 of the Government Code which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. The department acknowledges, and we agree, that it failed to comply with the requirements of section 552.301. A governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a

compelling reason to withhold the information from disclosure. Gov't Code § 552.302; *see City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101 and 552.136 of the Government Code can provide compelling reasons to overcome this presumption, we will consider your arguments under these sections.

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. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides as follows:

(a) [T]he 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). The submitted records pertain to an internal affairs investigation of an officer's conduct while investigating the circumstances surrounding the death of a child. Although there are references in the internal affairs records to the child's death and subsequent abuse investigation, these records were not used or developed in the child abuse investigation. However, included in the internal affairs file are records you represent were taken from the department's files pertaining to the child abuse investigation. These records, which we have marked, are within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the records we have marked are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). The remaining information you have marked under section 261.201 must be released.

Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that

is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. You inform us an employee’s identification number is also used as the employee’s credit union bank account number. Thus, the department must withhold the employee identification number you have marked in the submitted information under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the employee identification number you have marked under section 552.136 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 362857

Enc. Submitted documents

c: Requestor  
(w/o enclosures)