



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2010

Ms. S. McClellan
Assistant City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-16954

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# 401502 (DPD Request Number: 2010-8204).

The Dallas Police Department (the "department") received a request for all 9-1-1 calls, reports, and photographs in which the requestor's client is listed as a victim or perpetrator, including information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted only information pertaining to the specified incident. To the extent information responsive to the remainder 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 responsibilities under the Act. A governmental body that receives a written request for information it wishes to withhold must request a decision from this office and state the exceptions to public disclosure it believes apply to the information at issue. Gov't Code § 552.301(a). The governmental body must request the decision and state the exceptions that apply no later than the tenth business day after receiving the request. *Id.* § 552.301(b). The documents you have submitted indicate the

department received the request at issue on September 3, 2010. You did not request a decision from this office until September 24, 2010. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301 of the Government Code.

A governmental body's failure to comply with the procedural requirements of section 552.301 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. *See* Gov't Code § 552.302; *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, 381–82 (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. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302.

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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, 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.

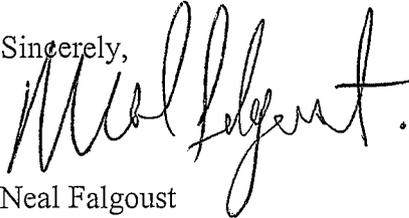
(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state the submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). You have not indicated that the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the submitted information is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

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, 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large, stylized initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 401502

Enc. Submitted documents

c: Requestor
(w/o enclosures)