



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2012

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2012-13178

Dear Ms. Middlebrooks:

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# 462674 (DPD PIR# 2012-06601).

The Dallas Police Department (the "department") received a request for the report relating to a specified service number. You claim a portion of 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 address the department's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The department received this request on June 4, 2012, and thus, the fifteen day deadline to fully comply with section 552.301(e) was June 25, 2012. However, the envelope in which you submitted the requested information, as well as your arguments against disclosure of this information, is dated June 26, 2012. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, we

find that the department failed to comply with the procedural requirements of section 552.301(e).

Pursuant to section 552.302 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 information is public and must be released. 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). 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). Because section 552.101 can provide a compelling reason to withhold information, we address the applicability of this section.

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 of the Family Code, which provides in part as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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:

...

(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)(2). Upon review, we find the submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(defining child abuse for purposes of section 261.201 of the Family Code); *see also* Penal Code § 21.11(a) (defining "child" for purposes of Penal Code section 21.11 as a person under 17 years of age). Therefore, we find this information is confidential under section 261.201 of the Family Code. You don't inform us that your office has adopted rules governing release of the submitted information. Therefore, we assume no such rules exist. Accordingly, we find the submitted information is confidential under section 261.201 of the Family Code and must be withheld from the requestor under section 552.101 of the Government Code. As we are able to make this determination, we need not address your argument against disclosure.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/tch

Ref: ID# 462674

Enc. Submitted documents

c: Requestor
(w/o enclosures)