



July 16, 2001

Ms. Mary E. Reveles
Assistant County Attorney
Fort Bend County
301 Jackson, Suite 621
Richmond, Texas 777469-3108

OR2001-3062

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149464.

The Fort Bend County Sheriff's Office (the "sheriff") received a written request for information pertaining to two investigations: the "911 cassette" from Case # 3043 and all records from Case # 01-406. You contend that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.

Before we address the applicability of the exceptions you raised, we must first address a procedural matter. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen business days of receipt of an information request "a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You have not submitted to this office a copy of the 911 recording pertaining to Case # 3043. We therefore have no basis on which to conclude that there exists a compelling reason for withholding the tape recording. Consequently, we have no choice but to conclude that the requested 911 recording is presumed to be public under section 552.302 and therefore must

be released to the requestor.¹ If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

You next contend that Case # 01-406 is excepted from public disclosure under both section 552.108(a)(1) and 552.108(a)(2) of the Government Code. Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law-enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication.

You characterize Case # 01-406 as “a closed case regarding threats of family violence.” You do not state, however, whether this investigation ended in a result other than a conviction or deferred adjudication. We therefore conclude that you have not met your burden of demonstrating the applicability of section 552.108(a)(2) to these records. Furthermore, although you contend that the release of this case report would interfere with the investigation of a pending child abuse case, you have not adequately demonstrated to this office why such would be the case. Accordingly, we conclude that Case # 01-406 does not come under the protection of section 552.108(a)(1). Consequently, the department must also release the records from Case # 01-406 in their entirety, with the following exception.

Contained in Case # 01-406 are several individuals’ driver’s license numbers. Section 552.130(a)(1) of the Government Code requires the department to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, the department must withhold all Texas driver’s license numbers pursuant to section 552.130(a)(1) of the Government Code. The remaining requested information must be released.

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

¹Although you appear to suggest that the 911 recording is made confidential under section 261.201 of the Family Code, which makes confidential information pertaining to investigations of child abuse, this recording was made several days prior to the raising of such allegations and is therefore unrelated to any investigation conducted under chapter 261 of the Family Code. We further note that because the tape recording is the only information requested from Case # 3043, this office does not deem the submitted offense report as being a “representative sample” of the requested information. See Gov’t Code § 552.301(e)(1)(D).

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal 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).

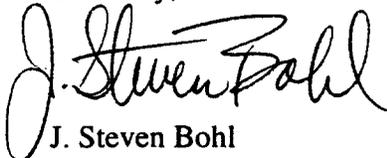
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 General Services Commission 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,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/RWP/seg

Ref: ID# 149464

Enc. Submitted documents

c: Mr. Mouhammad Hadrous
4103 Henley Court
Sugar Land, Texas 77479
(w/o enclosures)