



March 4, 2002

Mr. T. Daniel Santee II
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604

OR2002-1063

Dear Mr. Santee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159232.

The City of Abilene (the "city") received three requests from the same individual for call sheets, call tapes, police reports, and other information relating to certain dates and locations. You inform this office that the city has no information that is responsive to item nos. 2, 8, or 11 of the January 13, 2002 request.¹ You also inform us that item nos. 3, 4, 5, 6, and 7 of the January 13, 2002 request duplicate the requests dated December 4 and 5, 2001. You state that the city has released some of the information that is responsive to these requests. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.²

Initially, we address your statement that information submitted as Exhibit B2 was previously addressed in Open Records Letter No. 2001-5371 (2001). That decision concludes that the city may withhold a particular incident report under section 552.108(a)(2) of the Government Code, but must release basic information under section 552.108(c). You do not inform us, nor does it appear to this office, that there has been any change in the law, facts, and circumstances on which the prior ruling is based. Accordingly, the city may continue to rely

¹Chapter 552 of the Government Code does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note the requestor's statement that she previously requested information from the Abilene Police Department and that her request was denied. The requestor does not state, however, whether she made the previous request in writing. Chapter 552 of the Government Code does not require a governmental body to comply with a verbal request for information. See Gov't Code § 552.301(a); Open Records Decision No. 304 at 2 (1982).

on Open Records Letter No. 2001-5371 (2001) with regard to Exhibit B2. *See* Open Records Decision No. 673 at 6-7 (2001) (explaining that attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) where (1) precisely the same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D), (2) same governmental body previously requested and received a ruling, (3) prior ruling concluded that same records or information are or are not excepted from disclosure, and (4) law, facts, and circumstances on which prior ruling was based have not changed).

Next, we address the information submitted as Exhibit B3. Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential.³ Section 261.201 of the Family Code provides in relevant part:

(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). We find that the information submitted as Exhibit B3 and the related audiotape comprise files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. You do not inform this office that the city has adopted a rule that governs the release of this type of information. We therefore assume that no such rule exists. Given that assumption, we conclude that this information is confidential in its entirety under section 261.201 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). Accordingly, Exhibit B3 and the related audiotape must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law.⁴

³Unlike other exceptions to disclosure under chapter 552 of the Government Code, this office will raise section 552.101 on behalf of a governmental body because the release of confidential information is a criminal offense. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 (1982).

⁴We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

You claim that the remaining information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” You indicate that Exhibit B1 and the remaining audiotapes relate to investigations that did not result in a conviction or a deferred adjudication. Based on your representation, we conclude that section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The city must release basic information in Exhibit B1, including a detailed description of the offense, even if this information does not actually appear on the front page of this police report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the information in Exhibit B1 and the remaining audiotapes under section 552.108(a)(2).

In summary, the city may continue to rely on Open Records Letter No. 2001-5371 (2001) with respect to Exhibit B2. The city must withhold B3 and the related audiotape in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city may withhold the remaining information under section 552.108(a)(2), with the exception of the basic information that the city must release under section 552.108(c).

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 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,

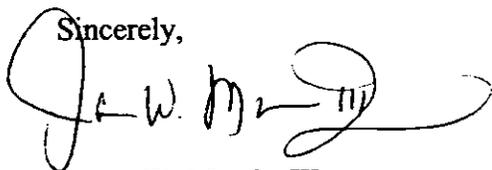
the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 159232

Enc: Submitted documents and tapes

c: Ms. Sheila Barnes
P.O. Box 3498
Abilene, Texas 79601
(w/o enclosures)