OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 2, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin Law Department
P. O. Box 1088
Austin, Texas 78767-8845

OR2002-6840

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172965.

The Austin Police Department (the "department") received a written request for "all police incident reports concerning [a specified address] for the past year, since August 31, 2001, through the present." You have submitted to this office as responsive to the request two records, one of which you contend is made confidential under section 261.201 of the Family Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Because you do not contend that the other submitted record is excepted from public disclosure, that record must be released to the requestor. *See* Gov't Code §§ 552.301, .302.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You characterize the submitted police report as concerning an allegation of "Child Endangerment/Abandonment." Section 261.201(a) of the Family Code provides:

> 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 [of a child] 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.* [Emphasis added.]

You have not informed this office of any rules the department has adopted that would permit access to this record. Because the information at issue pertains to an investigation of possible neglect of a child, this office concludes it is confidential pursuant to section 261.201 of the Family Code. Thus, the department must withhold this record in its entirety pursuant to section 552.101 of the Government Code.

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,

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/RWP/lmt

Ref: ID# 172965

Enc: Submitted documents

c: Mr. Nelson H. Moch
Texas Rural Legal Aid, Inc.
2201 Post Road, Suite 101
Austin, Texas 78704
(w/o enclosures)