



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 23, 2002

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-7378

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174091.

The McKinney Police Department (the "department"), which you represent, received a request for all documents pertaining to a named individual, including "offense reports, case documents, call for services made to [this individual], and call of services made for [the individual's] residence." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that this request was made by the Texas Board of Nurse Examiners (the "board") pursuant to a licensure investigation. The board is the state agency authorized to investigate complaints against nurses under section 301.457 of the Occupations Code. This office has concluded that information may generally be transferred between governmental bodies that are subject to the Public Information Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990),

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). However, although information may generally be transferred between governmental bodies without violating its confidential character, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure).

You contend that a portion of the information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

(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.

Report number 02-9100 relates to an alleged injury to a child. Thus, report number 02-9100 is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the marked documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). The requestor does not fall within any category of persons or entities that are authorized to receive this confidential information under

section 261.201. *See* Fam. Code §§ 261.201(b)-(g) (enumerating entities authorized to receive section 261.201 information). Accordingly, the department must withhold these documents from disclosure in their entirety under section 552.101 of the Government Code as information made confidential by law.

In summary, we have marked the documents that the city must withhold in their entirety under section 552.101 in conjunction with section 261.201 of the Family Code. We conclude that, pursuant to the intergovernmental transfer doctrine, the city has the discretion to release the remainder of the submitted documents to the requestor without waiving exceptions to disclosure under the Public Information Act or violating confidentiality.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 174091

Enc: Submitted documents

c: Ms. Rebecca Mallory
Investigator
Enforcement Division
Texas Board of Nurse Examiners
339 Guadalupe, Suite 3-460
Austin, Texas 78701
(w/o enclosures)