



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 5, 2003

Ms. Jan Clark  
Assistant City Attorney  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

OR2003-1433

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177460.

The San Marcos Police Department (the "department") received a request for "a copy of all police reports under [department] Case #02-04009." You claim that the requested information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered a letter submitted by the Hays County Criminal District Attorney (the "district attorney") objecting to the release of the submitted information.

Initially, we address the department's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You inform us that the department received the request for information on December 9, 2002. The tenth business day following this date was December 23, 2002. However, you did not request a decision from this office until December 26, 2002. You do not allege that the department was closed for any of the business days between December 9 and December 23. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely, the requested information is presumed to be public. Gov't Code § 552.302.

Information that is presumed public under section 552.302 must be released unless a compelling reason is shown for withholding it. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Normally, a compelling reason exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the department failed to comply with section 552.301 in requesting this decision, its claim of section 552.108 does not provide a compelling reason to overcome the presumption that the information at issue is public. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions are intended to protect only interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties); *cf.* Open Records Decision No. 586 (1991) (need of governmental body, other than one that failed to timely seek open records decision, may, in appropriate circumstances, be compelling reason for non-disclosure). However, as you also raise section 552.101, which can provide a compelling reason, we will consider your arguments under that exception.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses confidentiality provisions such as section 261.201(a) of the Family Code, which provides:

(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

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<sup>1</sup>The district attorney raises sections 552.101 and 552.108 as possible exceptions to disclosure. However, because the city has provided a compelling reason to withhold the submitted information, we need not consider the district attorney's arguments.

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We have reviewed the submitted information and find that it constitutes files, records, communications, and working papers used or developed by the department in an investigation made under chapter 261 of the Family Code or in providing services as a result of such an investigation. You do not inform us that the department has adopted a rule that governs the release of this type of information. We therefore assume that no such rule exists. Given this assumption, we conclude that the submitted information is confidential under section 261.201 of the Family Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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).

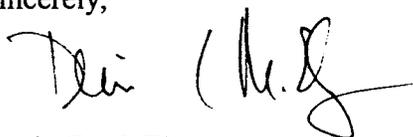
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 177460

Enc. Submitted documents

c: Mr. David Anderson  
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(w/o enclosures)