ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2005

Ms. Janis K. Hampton
Assistant City Attorney
City of Bryan
P. O. Box 1000
Bryan, Texas 77805

OR2005-09562

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 234785.

The Bryan Police Department (the "department") received a request from the Texas Department of Criminal Justice ("TDCJ") for information relating to an arrest for indecency with a child. You question whether the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. 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 [the Family 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 [chapter 261 of the Family Code] and the identity of the person making the report; and
> >
> > (2) except as otherwise provided in this section, the 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.

Fam. Code § 261.201(a). Because the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, we find that the information falls within the scope of section 261.201(a).

Section 261.201 provides, however, for the disclosure of confidential information if the release of the information is consistent with the Family Code and applicable federal or state law. *See* Fam. Code § 261.201(a). In this instance, the request for information was made by a representative of the Parole Division of TDCJ seeking access to the submitted information for the purpose of determining the suitability of a TDCJ inmate for possible parole. Section 508.311 of the Government Code provides as follows:

> On request of a member of the board or employee of the board or department, a public official of the state, including a judge, district attorney, county attorney, or police officer, who has information relating to an inmate eligible for parole shall send to the department in writing the information in the official's possession or under the official's control.

Gov't Code § 508.311. The word "department" in section 508.311 means TDCJ. *See* Gov't Code § 491.001(a)(3) (defining "department" for purposes of Gov't Code tit. 4 subtit. G). Thus, section 508.311 of the Government Code requires that information relating to an inmate eligible for release on parole be provided to TDCJ. As such, we find that section 508.311 constitutes an applicable state law for purposes of section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(a).

However, we cannot determine whether TDCJ intends to use the submitted information for a purpose consistent with the Family Code. Consequently, if the department determines that TDCJ intends to use the submitted information for a purpose consistent with the Family Code, we conclude that the department must make the submitted information available to the TDCJ. *See generally* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If, however, the department determines that TDCJ does not seek this information for a purpose consistent with the Family Code, the department must withhold the information from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 234785

Enc. Submitted documents

c: Phillip Doughty
Regional IPO Supervisor
Texas Department of Criminal Justice
1607 7th Street
Huntsville, Texas 77320
(w/o enclosures)