ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2006

Ms. Linda L. Sjogren
Shotts & Sjogren, LLP
P.O. Box 388
Dublin, Texas 76446

OR2006-05271

Dear Ms. Sjogren:

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# 249571.

The San Angelo Police Department (the "department"), whom you represent, received a request for information pertaining to a specific incident at a specific location on a particular date. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has failed to comply with section 552.301 of the Government Code in requesting this ruling from our office. *See* Gov't Code § 552.301(b), (d). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *Hancock,* 797 S.W.2d at 381-82. Normally, a compelling interest exists when some other source of law makes the information confidential or when third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments under section 552.101.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by statute. 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, 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). The submitted call for service relates to a welfare check. You have failed to demonstrate, and the submitted information does not reflect on its face, how this information was used or developed in relation to an investigation of child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001 (defining "abuse" and "neglect" for purpose of chapter 261 of the Family Code). Accordingly, we find that the information at issue is not within the scope of section 261.201 of the Family Code and is not excepted from disclosure under section 552.101 on that basis. As you raise no further exception against disclosure, the submitted information must be released.

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,

Margaret Cecere
Assistant Attorney General
Open Records Division

MC/eb

Ref: ID# 249571

Enc. Submitted documents

c: Ms. Samantha Dobbratz
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(w/o enclosures)