



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2006

Ms. Leona Clay  
Administrative Assistant  
Harker Heights Police Department  
120 South Harley Drive  
Harker Heights, Texas 76548

OR2006-06620

Dear Ms. Clay:

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# 252282.

The Harker Heights Police Department (the "department") received a request for information pertaining to a named individual. You state that you will provide a portion of the requested information to the requestor. You claim, however, that the remaining 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.

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 exception 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.

Fam. Code § 261.201(a). The submitted information relates to the sexual assault of a child. Thus, this information is within the scope of section 261.201 of the Family Code. *See* Fam. Code § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021).

Section 261.201 states, however, that this information may be disclosed for purposes consistent with the Family Code and other applicable law. *See* Fam. Code § 261.201(a). You have not indicated that any applicable federal or state law, or department rule, governs the release of this type of information. The requestor, an agency of another state, indicates the information at issue is subject to the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Program (the “Jacob Wetterling Act”) which provides that “[t]he information collected under a State [sex offender] registration program may be disclosed for any purpose permitted under the laws of the State.” 42 U.S.C. § 14071(e)(1). However, upon review of the Jacob Wetterling Act, we can find no release provision applicable to the information at issue. If the requestor informs the department of an applicable federal law that provides access to the information at issue consistent with the Family Code, the department must release this information in accordance with that access provision. If the requestor does not inform the department of such a provision, the department must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, if the requestor informs the department of a federal law that allows it access to the remaining submitted information, the department must release the information in accordance with that law. To the extent the requestor does not so inform the department, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 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,



Anne Prentice  
Assistant Attorney General  
Open Records Division

AP/sdk

Ref: ID# 252282

Enc. Submitted documents

c: Mr. Ollie Urquehart  
Arkansas Department of Corrections  
Sex Offender Screening and Risk Assessment  
P.O. Box 6209  
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(w/o enclosures)