ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2006

Mr. Robert K. Nordhaus
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2006-08354

Dear Mr. Nordhaus:

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# 255444.

The San Antonio Police Department (the "department") received a request for a specific incident report. You claim that the submitted 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 information.

Initially, we note that the submitted documents include a CRB-3 accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code.[1] *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* Here, the requestor has provided the department

[1]The Texas Department of Public Safety informs us that the Texas Peace Officer's Accident Report, ST-3 form, has been replaced by the Texas Peace Officer's Crash Report, CRB-3 form.

with two of the required pieces of information. Thus, you must release the accident report to the requestor in its entirety under section 550.065(b).

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 section 261.201(a) of the Family Code, which 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). You argue that the submitted police report is subject to section 261.201. Upon review, we agree that the submitted police report consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. *See* Fam. Code § 261.001 (defining "abuse" and "neglect" for purposes of Family Code, ch. 261). Thus, this information is within the scope of section 261.201 of the Family Code. You do not inform us that the department has adopted any rules that govern the release of this type of information. Thus, we assume that no such rules exist. Therefore, we find that the submitted police report is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Finally, you claim that the submitted "Hit And Run/F.S.R.A. Supplement" may be withheld under section 552.108 of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based on this representation, we conclude that the release of the "Hit And Run/F.S.R.A. Supplement" would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law

enforcement interests that are present in active cases). Therefore, you may withhold the "Hit And Run/F.S.R.A. Supplement" under section 552.108(a)(1).

In summary, you must release the accident report to the requestor in its entirety under section 550.065(b). The submitted police report is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101. You may withhold the "Hit And Run/F.S.R.A. Supplement" under section 552.108(a)(1).

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# 255444

Enc. Submitted documents

c: Mr. Rocio Ramirez
3667 Fredericksburg Rd.
San Antonio, Texas 78201
(w/o enclosures)