



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2006

Ms. Rebecca Brewer  
Abernathy Roeder Boyd & Joplin P.C.  
P. O. Box 1210  
McKinney, Texas 75070-1210

OR2006-11659

Dear Ms. Brewer:

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# 262794.

The Frisco Police Department (the "department"), which you represent, received a request for information relating to three specified incidents. 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.

As a preliminary matter, we note that you have submitted information that relates to two of the three incidents that have been requested. You have not submitted information relating to the third incident, which the requestor describes as having occurred on "July 22," nor do you inform us that this information has been released or that it does not exist. We therefore assume that, to the extent it exists, any information maintained by the department that is responsive to this portion of the request has been released to the requestor. If not, the department must release any such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that Gov't Code § 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We now address your arguments with respect to the submitted information.

Section 552.101 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 that another statute makes confidential. You contend that the submitted information is confidential under 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 inform us, and the submitted information indicates, that the records at issue relate to a matter that was referred by the department to the Texas Department of Family and Protective Services (“DFPS”). You further state that this “[i]nformation is being used by [DFPS] in a Chapter 261 investigation. . . .” Finally, you have provided us with an affidavit of a DFPS investigator/caseworker who represents that the department notified the DFPS of the two cases due to possible abuse or neglect involving children, and that “the investigation initiated by these reports/events is ongoing pursuant to the Texas Family Code.” Based on this information, we find that the submitted records constitute information used or developed in an investigation under chapter 261. You do not inform us whether the investigating agency has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the submitted information is confidential pursuant to section 261.201 of the Family Code and must therefore be withheld in its entirety under section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument.

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

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<sup>1</sup>We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child’s parent, managing conservator, or legal representative may have the statutory right to review that file. *See* Fam. Code § 261.201(g); Act of June 2, 2003, 78<sup>th</sup> Leg., R.S., ch. 198, § 1.27, 2003 Tex. Sess. Law Serv. 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/krl

Ref: ID# 262794

Enc. Submitted documents

cc: Ms. Lori House  
320 North Peninsula Drive  
Little Elm, Texas 75068  
(w/o enclosures)