ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2006

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2006-12564

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 262668.

The Garland Police Department (the "department") received a request for records of domestic violence between two named persons and a specific missing child report. You claim that the submitted incident reports are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your claimed exceptions to disclosure and have 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" and encompasses information made confidential by statute. *See* Gov't Code § 552.101. 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). You assert that since both reports "stem from the same operative facts," both are confidential as reports used or developed in an investigation of abuse under chapter 261 of the Family Code. We disagree. Based on our review of the documents and your arguments, only one of the reports, report #2006R004452, was used in a child abuse investigation. *See* Fam. Code § 261.001(1) (defining "abuse" for the purposes of chapter 261 of the Family Code). Since you have not indicated that the department has adopted a rule that governs the release of report #2006R004452, we assume that no such regulation exists. Given that assumption, we conclude that the department must withhold report #2006R004452 pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing statutory predecessor to Fam. Code § 261.201). The remaining report pertains to an assault investigation involving adults; therefore, it is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101.

You also argue that report #2006R004445 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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 report 2006R004445 relates to a pending criminal case. You further state that release of the information marked in red would interfere with the detection, investigation, or prosecution of crime. Based upon your representations and our review, we conclude that the red-marked information in report #2006R004445 may be withheld under section 552.108(a)(1). *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). We note that the department has the discretion to release all or part of report #2006R004445 that is not otherwise confidential by law. Gov't Code § 552.007.

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,

June B. Harden

June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 262668

Enc: Submitted documents

c: Ms. Jennifer Williams
7812 Hardwick Court
Plano, Texas 75025
(w/o enclosures)