



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2006

Ms. M. Ann Montgomery
Assistant Ellis County and District Attorney
Ellis County and District Attorney's Office
Temporary Administration Building
1201 North Hwy. 77, Suite 104
Waxahachie, Texas 75165-7832

OR2006-14234

Dear Ms. Montgomery:

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# 266032.

The Ovilla Police Department (the "department") received a request for information pertaining to a specific investigation into an alleged indecency with a child. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107(2), and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

The department states that the submitted information is the subject of a Protective Order. Section 552.107(2) of the Government Code excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You indicate, and the submitted documents reflect, that civil litigation regarding the defendant's minor child is pending in district court. You state that the presiding Judge in Cause No. 71,781 in the Ellis County District Court, 40th Judicial District has issued an order prohibiting the release of the requested information. The department has

¹You argue that the submitted information is the subject of a Protective Order. The proper exception to raise in this instance is section 552.107(2) of the Government Code. Gov't Code § 552.107(2). Accordingly, we will consider your argument under this section.

provided this office with a copy of the Order Granting Respondent's Motion to Quash Subpoena Duces Tecum and Motion for Protective Order. Based on the department's representations and our review of the information at issue, we conclude that the department must withhold the submitted information pursuant to section 552.107(2) of the Government Code.²

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.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/eb

Ref: ID# 266032

Enc. Submitted documents

c: Mr. Michael Tanner
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Dallas, Texas 75270-2196
(w/o enclosures)