



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2007

Ms. Lillian Guillen Graham  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2007-14603

Dear Ms. Graham:

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# 298000.

The Mesquite Police Department (the "department") received a request for information relating to a specified service number. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted. We also have considered the comments that we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201(a) 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the submitted information is confidential in its entirety under section 261.201 of the Family Code. The law firm that requested the information at issue contends that it has a right of access to the information under section 552.023 of the Government Code. Section 552.023 provides that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests. *See Gov't Code § 552.023(a)*. However, the release of information made confidential by section 261.201 of the Family Code is governed by the provisions of chapter 261 of the Family Code, not by section 552.023 of the Government Code. The requestor does not have a special right of access to the submitted information under section 261.201. *See Fam. Code § 261.201*. The department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> *See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute)*.

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 that a parent of a child who is the subject of reported abuse or neglect may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. *Fam. Code § 261.201(g)*.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", is written over a horizontal line. The signature is stylized and includes a large circular flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 298000

Enc: Submitted documents

c: Ms. Jenelle N, Wilson  
Hall & Heygood, L.L.P.  
2605 Airport Freeway Suite 100  
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(w/o enclosures)