



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2009

Ms. Meitra Farhadi  
Assistant City Attorney  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2009-00926

Dear Ms. Farhadi:

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# 333047.

The Austin Police Department (the "department") received requests from two requestors for information relating to 911 calls involving a specified arrest. You claim that the requested 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 information you submitted.

We first note that the department did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) provides that a governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the written request for information, the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us that the department received the instant requests for information on October 30, 2008; therefore, the department's fifteen-business-day deadline under section 552.301(e) was November 21. The requested information was submitted to this office by U.S. Mail meter-marked January 6, 2009. Thus, the department did not comply with section 552.301(e), and the submitted information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code, which the department claims, is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301, the department has waived section 552.108 and may not withhold any of the submitted information under that exception. However, the department's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure. Therefore, we will address that exception.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(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, audiotapes, videotapes, 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.

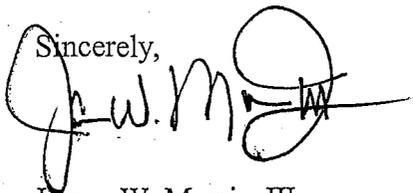
Fam. Code § 261.201(a). We find that the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of

section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). 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 and must be withheld from disclosure on that basis under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is stylized with a large, looping initial "J" and a long horizontal stroke extending to the right.

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

JWM/cc

Ref: ID# 333047

Enc: Submitted information

c: Requestors  
(w/o enclosures)