



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2009

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2009-02034

Dear Ms. McClellan:

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# 335126 (Request Number 2008-7796).

The Dallas Police Department (the "department") received a request for information pertaining to a named individual, including a specified incident. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.²

Initially, you acknowledge, and we agree, that the department failed to request a ruling or submit the responsive information within the statutory time periods prescribed by

¹Although you also raise section 552.108 of the Government Code as an exception to disclosure of the requested information, you have provided no arguments regarding the applicability of this section; we therefore assume that you no longer urge section 552.108. *See* Gov't Code §§ 552.301(b), (e); .302.

²To the extent any additional responsive information existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

sections 552.301(b) and 552.301(e) of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider whether your claimed exception to disclosure requires the department to withhold any portion of 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. 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 state that the requested information includes a referral to Child Protective Services. You further state that the requested information report was used or developed during a child abuse investigation. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Because the submitted information was used or developed in an investigation of alleged or suspected child abuse, the report is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open

Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with 261.201 of the Family Code.

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, 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 335126

Enc. Submitted documents

cc: Requestor
(w/o enclosures)