



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2009

Mr. Robert E. Reyna  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2009-03323

Dear Mr. Reyna:

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# 340991.

The San Antonio Police Department (the "department") received a request for two specified police reports. You claim that the submitted reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The department received the request for information on January 29, 2009. However, the department did not request a ruling from this office until February 13, 2009. Thus, we find that the department failed to comply with its ten-business-day deadline.

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); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the 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). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider your argument.

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. Section 552.101 encompasses section 261.201(a) 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 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). Upon review, we agree report No. 80389460 relates to an investigation of the alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011). Thus, this information falls within the scope of section 261.201. There is no indication that the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find that report No. 80389460 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). The department must withhold this report under section 552.101 of the Government Code. However, you have failed to demonstrate the applicability of section 261.201 to report No. 80180165. Therefore, this report may not be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. As no other exceptions are raised, this report must be released to the requestor.

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 "Reg Hargrove", with a long horizontal flourish extending to the right.

Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 340991

Enc. Submitted documents

c: Requestor  
(w/o enclosures)