



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2009

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

OR2009-07970

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# 350167.

The Mesquite Police Department (the "department") received a request for information related to three specified arrests. You state that some responsive information has been released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains the requestor's fingerprint. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The submitted fingerprint information is confidential under section 560.003; however, the requestor has a special right of access to his fingerprint information. *See id.* § 560.002(1). Therefore, the department must release this information, which we have marked, pursuant to section 560.002 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right

of access to information), 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

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:

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 [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). Exhibit 2 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of child abuse; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001 (1) (defining "abuse" for the purposes of chapter 261 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 no such regulation exists. Given that assumption, Exhibit 2 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 Exhibit 2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, you claim some of the remaining information in Exhibit 3 is excepted from disclosure under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a Texas driver's license or motor vehicle title or registration. Gov't Code § 552.130. Therefore, the department must withhold the Texas motor vehicle record information you have marked in Exhibit 3 under section 552.130.

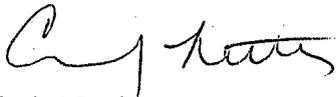
In summary, the department must release the marked fingerprint information pursuant to section 560.002 of the Government Code. The department must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department also must withhold the Texas motor vehicle record information you

have marked in Exhibit 3 pursuant to section 552.130 of the Government Code. The remaining information must be released to the requestor.¹

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 350167

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the records to be released contain information that is confidential with respect to the general public, in the event the department receives another request for this information from someone other than this requestor or his authorized representative, the city must ask this office for a decision whether the information is subject to public disclosure.. See Gov't Code § 552.023; see also ORD 481 at 4.