



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2009

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

OR2009-13567

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# 356575 (DPD Request No. 2009-5420).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note, and you acknowledge, that the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See id.* § 552.301(b). The information at issue is therefore 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; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). 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 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness; therefore, we will consider your argument under this 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 section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) Except as provided by Section 261.203, 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Act of May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, amended by Act of June 1, 2009, 81st Leg., R.S., S.B. 1050, § 1 (to be codified as an amendment of Fam. Code § 261.201(a)). Upon review, we find the submitted information was used or developed in an investigation of child abuse; therefore, the information is within the scope of section 261.201 of the Family Code. Fam. Code § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You have not indicated 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, 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.

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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 356575

Enc. Submitted documents

cc: Requestor
(w/o enclosures)