



June 7, 2002

Ms. Karen Saldana
Records Clerk
Saginaw Police Department
404 South Saginaw Boulevard
Saginaw, Texas 76179

OR2002-3092

Dear Ms. Saldana:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164174.

The Saginaw Police Department (the "department") received a request for report numbers 99005445 and 99005446. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

We initially must consider whether report number 99005446 is confidential under section 552.101 of the Government Code.¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception is applicable to information that another statute makes confidential. Chapter 261 of the Family Code governs investigations of suspected child abuse or neglect. Section 261.201 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 this code and applicable federal or state law or under rules adopted by an investigating agency:

¹Unlike other exceptions to disclosure under chapter 552 of the Government Code, we will raise section 552.101 on behalf of the governmental body, because chapter 552 prescribes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352; Open Records Decision No. 325 (1982).

- (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.

Fam. Code § 261.201(a). We find that report number 99005446 consists of files, reports, records, communications, 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. You have not informed us of any rule adopted by the department that would permit the release of this information to this requestor. We therefore assume that no such rule exists. Given that assumption, we conclude that report number 99005446 is confidential in its entirety under section 261.201 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). Therefore, report number 99005446 is excepted from disclosure under section 552.101 of the Government Code as information made confidential by law.²

Next, we address your claim under section 552.108 of the Government Code with regard to report number 99005445. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” A governmental body that raises section 552.108 must reasonably explain, if the information in question does not provide an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform us that report number 99005445 relates to a closed case that was rejected by the district attorney. Based on your representation and our review of report number 99005445, we find that this information relates to a concluded investigation that did not result in a conviction or a deferred adjudication. Therefore, section 552.108(a)(2) is applicable to report number 99005445.

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing Co. v. City of*

²We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The department must release basic information, including a detailed description of the offense, even if this information does not actually appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The department may withhold the rest of the information in report number 99005445 under section 552.108(a)(2) of the Government Code. We note that the department has the discretion to release additional information that is not made confidential by law. *See Gov't Code* § 552.007; Open Records Decision No. 177 at 3 (1977).

In summary, report number 99005446 is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold report number 99005445 under section 552.108 of the Government Code, but must release basic information under section 552.108(c).

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov't Code* § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

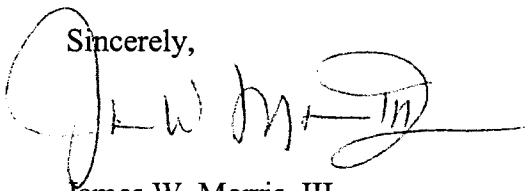
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 164174

Enc: Submitted documents

c: Ms. Cheri Starnes Smith
121 Mountain View Drive
Azle, Texas 76020
(w/o enclosures)