



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 21, 2003

Lieutenant Arturo Valdez
Central Records Division
McAllen Police Department
P.O. Box 220
McAllen, Texas 78505

OR2003-1159

Dear Lt. Valdez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176809.

The City of McAllen Police Department (the "department") received a request for a certain offense report. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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. Although you state that the requested information “concerns and/or contains information related to a child that may be a victim of an alleged crime,” upon inspection of the submitted report, we conclude that the investigation pertains to an injury to an elderly person, not abuse or neglect of a child. Thus, it is not an investigation under chapter 261 of the Family Code. Accordingly, we conclude that the report is not confidential under section 261.201 of the Family Code and may not be withheld under section 552.101.

We do note, however, that the submitted information contains a social security number that may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).* However, it is not apparent to us that the social security number contained in the information at issue was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the department should ensure that this number was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that the submitted documents include information that is protected by section 552.130 of the Government Code. Section 552.130 protects from disclosure driver’s license and motor vehicle information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The submitted information contains a driver’s license number. We have marked the driver’s license number that must be withheld under section 552.130.

In summary, the department must withhold the driver's license number that we have marked and prior to releasing any social security number, the department should ensure that this number was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. The department must release the remaining information.

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 Dep't of Pub. 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 176809

Enc: Submitted documents

c: Mr. James H. McKone
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McAllen, Texas 78501
(w/o enclosures)