



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2004

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8845

OR2004-0075

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193681.

The Austin Police Department (the "department") received three requests from the same requestor for information related to twenty-six addresses for the period of January 1983 to December 1989. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office two of the written requests for information. Additionally, in regard to the request for information that you did submit to this office, you failed to submit a copy of the specific information requested or representative samples of the information. Consequently, you failed to comply with section 552.301.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not provided a compelling reason under section 552.108 of the Government Code to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, you may not withhold the requested information under section 552.108 of the Government Code. Further, because you have not submitted information responsive to one of the requests for information, we have no basis for finding that requested information confidential. Thus, we have no choice but to order that information released in accordance with section 552.302. If you believe such information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. However, in regard to the submitted information responsive to the remaining requests for information, you claim sections 552.101, 552.130, and 552.132 of the Government Code as exceptions to disclosure. These exceptions can provide compelling reasons for overcoming the presumption of openness. *See* Open Records Decision No. 150 at 2 (1977). Thus, we will address these exceptions in regard to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records.² Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). Upon review of the submitted information, we find that the documents do not involve juvenile conduct. Therefore, the department may not withhold the submitted information pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code.

You also assert section 261.201 of the Family Code. This section reads in part 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:

²Although you assert section 58.007 of the Family Code, that section is only applicable to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007.

- (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.

Having reviewed the submitted information, we conclude that the documents at issue do not consist of reports, records, or working papers used or developed in investigations made under chapter 261 of the Family Code. Consequently, section 261.201 of the Family Code is inapplicable to the submitted information, and it may not be withheld on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and information relating to drug overdoses, *see* Open Records Decision No. 343 (1982). We have marked the information that is protected by common-law privacy and must be withheld under section 552.101 of the Government Code.

Next, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the department must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code.

Finally, you assert section 552.132 of the Government Code. Section 552.132(b) affords crime victims three years from the date of filing an application for compensation to submit an election for disclosure or non-disclosure of certain crime victim information held by the Crime Victim's Compensation Division of the Office of the Attorney General. *See* Gov't Code § 552.132(b). Additionally, section 552.132(f) permits an employee of a governmental body who is also a crime victim to elect whether to allow public access to information held by the Office of the Attorney General or other governmental body that would identify or tend to identify the crime victim. If the employee fails to make an election, the identifying

information is excepted from disclosure until the third anniversary of the date the crime was committed. *See* Gov't Code § 552.132(f). In this instance, however, you have failed to demonstrate the applicability of section 552.132 of the Government Code to the submitted information. Consequently, the submitted information may not be withheld on that basis.

In summary, we conclude that, in regard to the submitted information responsive to two of the requests for information, the department must withhold the information we have marked under sections 552.101 and 552.130 of the Government Code. All remaining submitted information must be released. The information that was not submitted to this office in response to the remaining request for information must be released in accordance with section 552.302 of the Government Code.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 193681

Enc: Submitted documents

c: Mr. Robert A. Post
2616 Mossvine Dr.
Carrollton, Texas 75007
(w/o enclosures)