



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2004

Mr. Paul F. Wieneskie
Cribbs & McFarland
P.O. Box 13060
Arlington, Texas 76094-0060

OR2004-1536

Dear Mr. Wieneskie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196932.

The City of Euless Police Department (the "department"), which you represent, received a request for all reports and photographs regarding incidents of assault involving two named individuals during a specified time period. You note that the department has six reports that are responsive to this request. However, you claim that only one of the responsive reports is excepted from disclosure under section 552.101 of the Government Code. As you did not submit any information regarding the other five responsive reports for our review, nor do you indicate that you seek to withhold this information, we assume you have released these reports to the requestor. If you have not released this information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that most of the information you have submitted to us for review is the identical information that was the subject of a previous ruling from this office. In Open Records Letter No. 2003-8917 (2003), we reviewed a request that the department received concerning abuse calls to a specified apartment involving two named individuals. Because the facts and circumstances surrounding our previous ruling do not appear to have changed, to the extent that the present request seeks information on which we have previously ruled, you must comply with our prior ruling in regards to this information. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria for previous determination regarding cases when requested information is precisely the same information as was addressed in prior attorney general ruling).

We must now address the procedural requirements of section 552.301 of the Government Code in regards to the remaining submitted information. Section 552.301(e) provides that 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. *See* Gov't Code § 552.301(e).

Upon review of the submitted information, we note that the remaining submitted information was responsive to the initial request for this information that was subject to our previous ruling, Open Records Letter No. 2003-8917. Thus, the department was required to submit this information in response to the initial request for information by October 15, 2003. However, the department did not submit this information to us. Therefore, the department failed to comply with the procedural requirements of section 552.301 of the Government Code in regard to the remaining submitted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also 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); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments concerning this exception.

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 section encompasses information another statute makes confidential. Section 261.201 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.

You contend that section 261.201 of the Family Code applies to the submitted report because the case “resulted in Child Protective Services opening an investigation.” However, the requested report in this case does not involve an investigation of suspected abuse or neglect of a child made under chapter 261. Therefore, you cannot withhold this information under section 261.201 of the Family Code.

You also argue that the submitted photographs are excepted from disclosure under section 552.101 in conjunction with 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. 540 S.W.2d at 683. Upon review, we find that the submitted photographs are not protected under common-law privacy and may not be withheld pursuant to section 552.101 of the Government Code.

However, the remaining submitted information contains a Texas driver’s license number that is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. Gov’t Code § 552.130(a)(1). Accordingly, you must withhold the Texas driver’s license number we have marked. The remaining information must be released to the requestor.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 196932

Enc. Submitted documents

c: Mr. William G. Collins
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Weatherford, Texas 76087
(w/o enclosures)