



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2008

Ms. Cathie Childs
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR2008-07749

Dear Ms. Childs:

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# 312575.

The Austin Police Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you have submitted.

Section 552.101 of the Government Code 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 in relevant 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:

(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(a). Upon review of your arguments and the submitted incident report, we find that the department has failed to demonstrate how the incident report at issue was used or developed in an investigation of child abuse or neglect under chapter 261 of the Family Code. We, therefore, determine that section 261.201 is not applicable to the submitted incident report. Accordingly, the department may not withhold the submitted incident report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note that some of the submitted information is excepted under section 552.130 of the Government Code.¹ Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, the department must generally withhold the Texas motor vehicle record information we have marked under section 552.130. We note, however, that section 552.130 protects privacy. The requestor is the spouse of one of the individuals whose motor vehicle information is at issue. Thus, the requestor may have a right of access to her husband's Texas motor vehicle record information under section 552.023. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Thus, to the extent the requestor is the authorized representative of her husband, she has a right of access to her husband's information, and it may not be withheld under section 552.130. In this instance, the remaining Texas motor vehicle record information we have marked must be withheld under section 552.130. To the extent the requestor is not the authorized representative of her husband, the department must withhold this information, as well as the remaining Texas motor vehicle information we have marked under section 552.130. As you raise no other arguments against disclosure of the remaining information, it must be released.²

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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note that the submitted information contains a social security number. Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge 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 Office of the Attorney General 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. 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 312575

Enc. Submitted documents

c: Ms. Veronica Escamilla
2002 Moonstem Drive
Killeen, Texas 76549
(w/o enclosures)