



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2009

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2009-13395

Dear Mr. Phillips:

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# 356076 (Fort Worth PIR No. 4436-09).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed your arguments and the submitted information.

You state the requested information was ruled upon in Open Records Letter No. 2008-17207 (2008). In that ruling, we ruled that the city must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We note, however, that section 261.201 has changed since the issuance of that previous ruling. Thus, because the law affecting the information at issue has changed, the city may not rely upon our previous ruling as a previous determination. We note that the submitted information may be subject to sections 552.101, 552.130, and 552.137 of the Government Code; thus, we will address the applicability of these exceptions.<sup>1</sup>

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

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

Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides in part as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;  
or

(B) another child of the parent, managing conservator,  
or other legal representative requesting the  
information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1, sec. 261.201, 1995 Tex. Gen. Laws 113, 262, *amended by* Act of June 3, 2009, 81st Leg., R.S., ch. 1377, § 13, 2009 Tex. Sess. Law Serv. 4324, 4327–28 (Vernon) (to be codified as amendments of Fam. Code § 261.201). The submitted report was used or developed in an investigation of alleged or suspected child abuse or neglect. *See* Fam. Code § 261.001(1) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find the submitted report is generally confidential under section 261.201 of the Family Code.

We note, however, that the requestor represents an individual identified in the submitted information as having “received custody” of the child named as a victim in the chapter 261 investigation. Further, this individual is not alleged to have committed the suspected abuse. It is not clear whether the requestor’s client is the child’s managing conservator or other legal representative for purposes of section 261.201(k). Thus, we must rule conditionally. If the requestor’s client is not the child’s managing conservator or other legal representative for section 261.201(k) purposes, the city must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor’s client is the child’s managing conservator or other legal representative, the city may not use section 261.201(a) to withhold this report from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). We note portions of the submitted information are subject to sections 552.130 and 552.137 of the Government Code. Accordingly, we will consider these exceptions to disclosure.

Section 552.130 of the Government Code excepts from disclosure “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[.]” Gov’t Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.<sup>2</sup>

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The e-mail addresses we have marked in the submitted information do not appear to be of types

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<sup>2</sup>We note that section 552.130 does not encompass Texas driver’s license information that pertains to a deceased individual. *See* Open Records Decision No. 272 (1981).

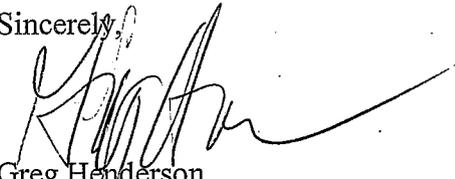
excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless you receive consent for their release.

In summary, if the requestor's client is not the managing conservator or other legal representative of the child listed in the submitted report for section 261.201(k) purposes, the city must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor's client is the managing conservator or other legal representative of the child for section 261.201(k) purposes, the city must release the submitted report to this requestor; however, the city must withhold the Texas motor vehicle record information we marked under section 552.130 of the Government Code and the e-mail addresses we marked under section 552.137 of the Government Code, unless the city has receive consent for the release of those e-mail addresses.<sup>3</sup>

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/dls

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<sup>3</sup>In this case, the remaining information being released contains confidential information regarding the alleged child victim to which the requestor has a right of access as the child's conservator or legal representative. *See* Fam. Code § 261.201(k). If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office. Further, we note the information being released contains social security numbers. Section 552.147(b) of the Government Code 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.

Ref: ID# 356076

Enc. Submitted documents

c: Requestor  
(w/o enclosures)