



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2009

Mr. Robert E. Reyna
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2009-14509

Dear Mr. Reyna:

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# 358223 (COSA File # 2008-2130).

The City of San Antonio (the "city") received a request for a specified report. You claim that the submitted report is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the 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. *Id.*

§ 552.301(e). The city received the request for information on November 13, 2008, but did not request a ruling from this office or submit the information required by subsection (e) until August 7, 2009. Thus, the city failed to comply with the procedural requirements mandated by section 552.301.

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 the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires the city to withhold 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.” Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(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 . . . 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 May 28, 2007, 80th Leg., R.S., ch. 263, § 12, 2007 Tex. Gen. Laws 421, 428, *amended by* Act of June 1, 2009, 81st Leg., R.S., ch. 779, § 1, 2009 Tex. Sess. Law Serv. 1965 and Act of June 3, 2009, 81st Leg., R.S., ch. 1377, § 13, 2009 Tex. Sess. Law Serv. 4324, 4327 (Vernon) (to be codified as amendments of Fam. Code § 261.201). The submitted report was used or developed in an investigation of an alleged injury to a child. *See* Fam. Code § 261.001(1) (defining “abuse” for purposes of Fam. 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 is an individual identified in the submitted report as having 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 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 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 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). Section 261.201(l)(3) states, however, the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the city must withhold the reporting party's identity, which we have marked, under section 552.101 in conjunction with section 261.201(l)(3).

Additionally, 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 a portion of the remaining information is subject to section 552.130 of the Government Code.¹ 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 driver's license number we have marked pursuant to section 552.130 of the Government Code.

In summary, if the requestor 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 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 reporting party's identity we have marked under section 552.101 in conjunction with section 261.201(l)(3) of the Family Code and the Texas driver's license number we have marked under section 552.130 of the Government Code.²

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, 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

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

²In 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.

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,

A handwritten signature in cursive script, appearing to read "C. Alvarado".

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 358223

Enc. Submitted documents

cc: Requestor
(w/o enclosures)