



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2010

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-00471

Dear Mr. Weir:

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# 367020.

The City of San Antonio (the "city") received a request for a specified offense report. You claim the submitted report is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). The city states it received the request for information on October 14, 2009. Accordingly, the city's ten-business-day deadline was October 28, 2009. The city did not request a ruling until October 30, 2009. Consequently, we find the city failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act 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. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 at 2 (1977). Section 552.108 is discretionary in nature, and serves only to protect a governmental body's interests; as such, it may be waived. See Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the city may not withhold any of the submitted information pursuant to section 552.108 of the Government Code. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this exception to the requested 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides 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:

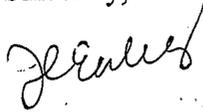
- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert the submitted offense report pertains to an allegation of abuse or neglect of a child. See *id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). You do not indicate the city has adopted a rule governing the release of this type of information. Based on your representations and our review, we find the submitted report is confidential under section 261.201. See *id.* § 261.201(a). Accordingly, the submitted report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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 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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 367020

Enc. Submitted documents

c: Requestor
(w/o enclosures)