



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2010

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

OR2010-06791

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# 379672 (COSA File No. 2010-5241).

The City of San Antonio (the "city") received a request for information relating to a specified case number. You claim that the requested information 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 procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes 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. *See* Gov't Code § 552.301(b). You state that the request was received by the city on February 24, 2010. Accordingly, the ten-business-day deadline was March 10, 2010. However, your request for a ruling is meter-marked March 11, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, the city did not request a decision from this office within the ten-business-day period prescribed by section 552.301(b). Consequently, we find you have 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 requirements of section 552.301 results in the legal presumption the

requested information is public and must be released, unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because section 552.101 can provide a compelling reason for non-disclosure of information under section 552.302 of the Government Code, we will consider whether any of the submitted information is excepted from public disclosure under this section. Further we note that section 552.130 of the Government Code, which also can provide a compelling reason to overcome the presumption, may be applicable to some of the submitted information; therefore, we will consider whether the submitted information is excepted under that section as well.¹

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 that other statutes make confidential. The city raises section 552.101 in conjunction with section 261.201 of the Family Code, which provides in 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services (“DFPS”)] 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

¹The Office of the Attorney General will raise a mandatory exception such as section 552.130 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

(1) 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:

...

(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.

Fam. Code § 261.201(a), (k), (l). Upon review, we find that the submitted information consists of files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under chapter 261 of the Family Code; thus, this information falls within the scope of section 261.201(a). *See id.* § 261.001(1) (defining "abuse" for the purposes of Fam. Code ch. 261). As you do not indicate that the city has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

In this instance, however, the requestor is a parent of the child who was the victim of the alleged or suspected abuse. Moreover, the responsive information does not indicate that the requestor is alleged to have committed the alleged or suspected child abuse. You acknowledge that the requestor in this instance has a right of access to the offense report, but seek to withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We note that access under section 261.201(k) encompasses "information concerning the reported abuse or neglect that would otherwise be confidential" under section 261.201, and is not limited to information contained in an offense report. *See* Fam. Code § 261.201(k). Therefore, the city may not withhold the submitted information from this requestor under section 552.101 on the basis of section 261.201(a). *See id.*

However, section 261.201(l)(3) provides the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k); therefore, the city must withhold the information we have marked under section 552.101 in conjunction with

section 261.201(1)(3). *Id.* § 261.201(1)(3). Additionally, section 261.201(1)(2) provides that before a parent may inspect or copy a record concerning the child, any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider whether any portion of the remaining information is excepted from required public disclosure under the Act or other law.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(b)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; ORD 598. This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We note medical records involving a minor may be released under the MPA on the parent's or legal guardian's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Thus, we have marked the information that is subject to the MPA, and the city must withhold this information unless it receives written consent for its release that complies with sections 159.004 and 159.005 of the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has held a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for*

Freedom of the Press, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. See Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). We have marked information that is highly intimate or embarrassing and of no legitimate public interest. The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *Id.* § 552.130(a)(1). We note that section 552.130 protects personal privacy. In this instance, the requestor has a right of access under section 552.023 to her own Texas motor vehicle information and it may not be withheld from her pursuant to section 552.130. 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). We conclude that the city must withhold the Texas motor vehicle record information not pertaining to the requestor under section 552.130 of the Government Code.²

In summary, the city must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The city must release or withhold the marked medical records in accordance with the MPA. The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The city must also withhold the Texas motor vehicle record information not pertaining to the requestor that we have marked under section 552.130 of the Government Code. The remaining information must be released.³

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released contains a social security number. 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. See Gov't Code § 552.147. Further, we note that because this requestor has a special right of access to information that would ordinarily be confidential under section 261.201(a) of the Family Code, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 379672

Enc. Submitted documents

c: Requestor
(w/o enclosures)