



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2010

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, TX 76102

OR2010-13894

Dear Ms. Sangsvang:

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# 397152 (Fort Worth Tracking Number W002594-072710).

The City of Fort Worth (the "city") received a request for a police investigation file related to a specified incident. You state that you have redacted certain Texas motor vehicle record information pursuant to the previous determinations issued to the city by this office in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you have redacted a social security number under section 552.147 of the Government Code.¹ You further state that some of the information has been released to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹Section 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. *See* Gov't Code § 552.147.

² We note that the city initially raised an exception to disclosure under section 552.108 of the Government Code but subsequently withdrew that argument. We also note that the city did not raise section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code as an exception to disclosure within ten business days of the date the city received the request. *See* Gov't Code §§ 552.301(b), .302. However, because section 1703.306 of the Occupations Code is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will consider your claim under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. *See id*; *see also* Open Records Decision No. 150 at 2 (1977).

Section 552.101 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(a) of the Family Code, which states:

(a) Except as provided by Section 261.203, 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, 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 Chapter 552, Government Code, or other law; and

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

Fam. Code § 261.201(a), (k)–(l). The requested information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Thus, the information is within the scope of section 261.201 of the Family Code. We note the requestor is the mother of the child who is the subject of the report. Furthermore, the requestor is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the city may not withhold the information at issue from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(1)(3). Accordingly, the city must withhold the reporting party’s identity, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3). We note that the remaining information you have highlighted in yellow does not identify the reporting party for the purposes of section 261.201(1)(3). Additionally, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law still may be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining argument under section 552.101 of the Government Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code, which states, “[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination [.]” Occ. Code § 1703.306. The information you have marked in green and the attached “Polygraph Examination Report” are information acquired from a polygraph examination and are within the scope of section 1703.306. Accordingly, the city must withhold this information under section 552.101 of the Government Code.

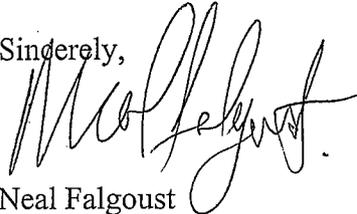
In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The city also must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The remaining information must be released to this requestor.³

³We note that the information to be released contains information that would be confidential with regard to the general public, but to which this requestor has a right of access under section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k). Should the city receive another request for this information from someone other than this requestor, the city should again seek a decision from this office.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 397152

Enc. Submitted documents

c: Requestor
(w/o enclosures)