



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2010

Mr. Juan R. Molina
Attorney for the City of Mercedes
P.O. Box 190
Weslaco, Texas 78596

OR2010-15331

Dear Mr. Molina:

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# 396122.

The City of Mercedes (the "city"), which you represent, received two requests for information pertaining to a specified incident. You claim the submitted information 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 note the city failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving a written request for information. Gov't Code § 552.301(b). Section 552.308 states:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and:

- (1) it bears a post office cancellation mark or a receipt mark of a common or contract carrier indicating a time within that period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or common or contract carrier within that period.

Id. § 552.308(a). The city received the first request for information on July 19, 2010, and the second request for information on July 20, 2010. Accordingly, the city's ten business day deadlines were August 2, 2010, and August 3, 2010, respectively. *See id.* § 552.301(b). We received the city's request for a ruling and the information you seek to withhold on August 4, 2010. The envelope in which you submitted the request for a ruling does not contain a postmark date. Further, the city has not furnished satisfactory proof the request for a ruling was deposited in the mail within the ten-business-day deadline. Thus, we are unable to determine the city mailed its request for ruling within the ten-business-day deadline. *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). Consequently, we find 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 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code as an exception to disclosure, this exception is discretionary in nature. Section 552.108 serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *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 portion of the submitted information pursuant to section 552.108. However, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will address your argument under section 552.101.

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 section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides, in part, as follows:

(a) Except as provided by Section 261.203, the 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:

...

(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)(2)-(3). The submitted report was used or developed in an investigation by the city's police department of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also*

Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). Accordingly, this report is within the scope of section 261.201(a).

However, the second requestor is the mother of the child victim listed in the report, and the mother is not alleged to have committed the suspected abuse. In this instance, the submitted report may not be withheld from this requestor pursuant to section 261.201(a). Fam. Code § 261.201(k). Additionally, the first requestor appears to be the father of the child victim listed in the report, and he is also not alleged to have committed the suspected abuse. As we are unable to conclusively determine if the first requestor is the father of the child victim, we must rule conditionally. If the first requestor is not the father of the child victim, then the city must withhold the submitted report in its entirety from the first requestor under section 552.101 in conjunction with section 261.201(a). However, if the first requestor is the father of the child victim, the city also may not use section 261.201(a) to withhold this information from him. *Id.* Further, 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 marked under section 552.101 in conjunction with section 261.201(l)(3). *Id.* § 261.201(l)(3). Additionally, section 261.201(l)(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(l)(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 552.130 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.¹ Gov’t Code § 552.130(a)(1). Thus, the city must withhold the Texas driver’s license number we marked under section 552.130.²

In summary, the city must withhold the submitted information from the first requestor if he is not the father of the child victim under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold (1) the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code and (2) the Texas driver’s license number we marked under section 552.130 of the Government Code from the second requestor and the

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).

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.

first requestor if he is the father of the child victim. In this instance, the city must release the remaining information to both requestors.³

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 396122

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Albert Dominic Trevino
710 S. Story Rd. # 2083
Irving, Texas 75060
(w/o enclosures)

³The 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.