



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 23, 2010

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2010-17722

Dear Ms. Armstrong:

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# 400915 (DPD# 2010-8285)

The Dallas Police Department (the "department") received a request for the offense report related 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 must address the department's procedural obligations under the Act. Because this office needed additional information regarding whether the submitted information relates to a licensed child care center regulated under chapter 42 of the Human Resources Code, this office requested by correspondence sent to you by facsimile on October 28, 2010 that the department provide such information. *See* Gov't Code 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). The October 28, 2010 correspondence informed you that the department had seven calendar days to submit to this office the additional information requested. *See id.* § 552.303(d) (governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date notice is received). As of the date of this letter, we have not received a response from the department. Because the department

did not respond to our letter, we find the department failed to comply with section 552.303(d).

Pursuant to section 552.303(e) of the Government Code, a governmental body's failure to comply with the requirements of section 552.303(d) results in the legal presumption that the requested information is subject to required public disclosure and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.303(e); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code as an exception to disclosure of the submitted information, this exception is discretionary in nature. It 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 552.303. *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 department may not withhold the submitted information pursuant to section 552.108 of the Government Code. However, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider the applicability of this section to 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 section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 261.201(a), (h). You assert the submitted incident report was used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 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). However, section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *Id.* § 261.201(h). The submitted information indicates the alleged offense occurred at a child care facility, but does not reveal whether that facility was regulated under chapter 42. Because the department failed to respond to our request for additional information, we must rule conditionally. If the facility at which the alleged abuse occurred was not regulated by chapter 42 of the Human Resources Code, we conclude the submitted information is subject to section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code. However, if the facility at which the alleged abuse occurred was regulated by chapter 42 of the Human Resources Code, section 261.201 of the Family Code is not applicable to the information at issue and the department may not withhold the submitted information under section 552.101 on that basis.

If the facility was regulated by chapter 42 of the Human Resources Code, we address your assertion that the submitted information is confidential pursuant to common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note the right of privacy lapses at death; thus, none of the submitted information may be withheld on the basis of the privacy interests of the deceased individual listed as the complainant in the submitted report. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981). Further, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public interest. Accordingly, the department may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

In summary, if the child care facility was not regulated under chapter 42 of the Human Resources Code, the submitted information must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. If the child care

facility was regulated under chapter 42 of the Human Resources Code, the department must release the submitted information.

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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 400915

Enc. Submitted documents

c: Requestor  
(w/o enclosures)