



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2010

Ms. Cecilia Gamez  
Crime Records Bureau  
McAllen Police Department  
P.O. Box 220  
McAllen, Texas 78501

OR2010-18273

Dear Ms. Gamez:

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# 402103.

The McAllen Police Department (the "department") received a request for the police report related to case number 2010-089747. 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.

First, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the 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, and the request reflects, the department received the request for information on September 10, 2010. Thus, the department's ten-business-day deadline was September 24, 2010. However, your brief requesting a decision from this office was sent in an envelope postmarked September 28, 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). You do not inform us the department was closed for any business days between September 10 and 28, 2010. Thus, the department failed to comply with the requirements mandated by section 552.301(b).

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 that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and that may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, your claim under section 552.108 does not provide a compelling reason for non-disclosure, and the department may not withhold any of the submitted information pursuant to that exception. Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this exception requires the department to withhold the submitted records.

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 information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in part:

(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 [Texas Department of Family and Protective Services] 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.

(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), (1)(2), (1)(3). You represent the submitted report was used or developed in an investigation by the department of alleged child abuse. *See id.* § 261.001(1)(E) (definition of “child abuse” for purposes of chapter 261 includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of section 22.021 as “person younger than 17 years of age”). Thus, this report is subject to section 261.201(a).

However, the requestor is an individual identified in the submitted report as having custody of the child named as a victim in the chapter 261 investigation. Further, this individual is not alleged to have committed the suspected abuse. It is not clear whether the requestor is the child’s managing conservator or other legal representative for purposes of section 261.201(k). Thus, we must rule conditionally. If the requestor is not the child’s managing conservator or other legal representative for section 261.201(k) purposes, the department must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the child’s managing conservator or other legal representative, the department may not use section 261.201(a) to withhold this report from this requestor. *See* Fam. Code § 261.201(k). However, section 261.201(1)(2) states 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). Thus, we consider your remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 58.106 of the Family Code. You claim the submitted report is made confidential by section 58.106. However, subchapter B of chapter 58 of the Family Code, which contains section 58.106, pertains to the administration of the juvenile justice information system by the Texas Department of Public Safety. *See id.* § 58.102. Section 58.104 of the Family Code provides that the juvenile justice information system shall consist of information relating to certain delinquent

conduct committed by a juvenile offender that would constitute a criminal offense. *See id.* § 58.104(a). In this instance, none of the information you seek to withhold consists of information pertaining to criminal acts committed by juvenile offenders that is maintained in the juvenile justice information system. *Id.* §§ 58.001(a), .007(c), .104(a). Thus, the submitted report is not confidential under section 58.106 and may not be withheld under section 552.101 of the Government Code on that basis. However, section 261.201(1)(3) of the Family Code states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Thus, the department must withhold the reporting party's identity, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3).

In summary, if the requestor is not the managing conservator or other legal representative of the child listed in the submitted report for section 261.201(k) purposes, the department must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the managing conservator or other legal representative of the child for section 261.201(k) purposes, the department must release the submitted report to this requestor; however, the department must withhold the reporting party's identity we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.<sup>1</sup>

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

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<sup>1</sup>In such case, the information being released contains confidential information regarding the alleged child victim to which the requestor has a right of access as the child's conservator or legal representative. *See* Fam. Code § 261.201(k). Therefore, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

Ref: ID# 402103

Enc. Submitted documents

c: Requestor  
(w/o enclosures)