



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2010

Mr. Paul F. Wieneskie
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204 South Mesquite
Arlington, Texas 76010

OR2010-19234

Dear Mr. Wieneskie:

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# 403382.

The Euless Police Department (the "department"), which you represent, received a request for eight specified reports. You state one of the requested reports does not exist.¹ You also state the department will release two of the requested reports to the requestor. You claim the submitted 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 department's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the state

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The department states it received the request for information on September 17, 2010. Thus, the ten-business-day deadline for requesting a ruling from this office was October 1, 2010, and the fifteen-business-day deadline was October 8, 2010. However, you did not request a ruling from this office, state the claimed exception, or submit the information required by section 552.301(e) until October 12, 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). Consequently, we find the department 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 procedural requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fórt Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-2 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness); Open Records Decision No. 319 (1982). Normally, 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). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the department's arguments against disclosure under this exception.

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 in relevant 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 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:

(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 [the Act], or other law; and

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

Fam. Code § 261.201(a), (k), (l). You inform us that report numbers 10-0015001 and 10-0015174 were originated by Child Protective Services ("CPS"). You also indicate that report numbers 10-0015001 and 10-0015174 pertain to reports of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" 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). Therefore, these reports fall within the scope of section 261.201(a).

However, we note the requestor may be a parent of one of the child victims involved in the reports, and the requestor is not alleged to have committed the alleged abuse or neglect. As such, this requestor may have a right of access to report numbers 10-0015001

and 10-0015174 pursuant to section 261.201(k). As we are unable to determine whether the requestor is a parent of one of the child victims, we will rule conditionally.

If the requestor is not a parent of one of the child victims listed in the reports at issue, the department must withhold report numbers 10-0015001 and 10-0015174 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the requestor is the parent of one of the child victims, the department may not use section 261.201(a) to withhold report numbers 10-0015001 and 10-0015174 from this requestor. *Id.* § 261.201(k). In that instance, section 261.201(1)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Thus, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3). Furthermore, section 261.201(1)(2) provides that any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). We note some of the remaining information in report numbers 10-0015001 and 10-0015174 is subject to common-law privacy and section 552.130 of the Government Code.² Therefore, in accordance with section 261.201(1)(2) of the Family Code, we will consider the applicability of common-law privacy and section 552.130 to the remaining portions of report numbers 10-0015001 and 10-0015174.

Next, we address your arguments that report numbers 10-0018542, 10-0059252, and 10-0059272 are excepted from disclosure under common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered highly intimate and 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. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. You seek to withhold report number 10-0018542 in its entirety. However, in this instance, with respect to report number 10-0018542, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the report must be withheld on the basis of common-law privacy. We note portions of report numbers 10-0015001 and 10-0018542 are highly intimate or embarrassing and of no legitimate public concern. Therefore, the department

²The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

must withhold the information we have marked in report numbers 10-00015001 and 10-0018542 under section 552.101 in conjunction with common-law privacy.

You also assert report numbers 10-0059252 and 10-0059272 should be withheld in their entirety because both reports pertain to an alleged sexual assault. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold an entire report when the requestor knows the identity of the alleged victim. *See* ORD 393. You assert, and the submitted information confirms, that the requestor knows the identity of the alleged sexual assault victim. Thus, withholding only the victim's identifying information from the requestor would not preserve the victim's common-law right to privacy. Accordingly, the department must withhold report numbers 10-0059252 and 10-0059272 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

In summary, if the requestor is not the parent of one of the child victims at issue in report numbers 10-0015001 and 10-0015174, then the department must withhold these reports in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor is the parent of one of the child victims in report numbers 10-0015001 and 10-0015174, then the department must withhold the reporting party's identifying information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code, along with the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The department must withhold report numbers 10-0059252 and 10-0059272 in their entirety and the information we have marked in the remaining information under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

³This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/tf

Ref: ID# 403382

Enc. Submitted documents

c: Requestor
(w/o enclosures)