



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2011

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2011-02789

Dear Mr. Alicie:

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# 409913.

The Baytown Police Department (the "department") received a request for police report 2010-47705. The department received a second request from a different requestor for police reports 2009-48348, 2010-12133, 2010-47419, 2010-47977, and report 2010-47705. You state you have redacted social security numbers under section 552.147 of the Government Code.¹ You also state you have released police reports 2010-12133, 2010-47419, 2010-47977 to the second requestor. You claim that 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 obligations under the Act. Section 552.301 of the Government Code 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), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state the department received the first request for information on November 29, 2010. *See id.* § 552.308 (describing rules for calculating

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. Gov't Code § 552.147(b).

submission dates of documents sent via first class United States mail). However, you did not request a ruling from this office until December 14, 2010. Consequently, we find the department failed to comply with the requirements of section 552.301 in respect to the first request.

Pursuant to section 552.302 of the Government Code, the submitted information responsive to the first request is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Forth 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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You raise section 552.108 of the Government Code as an exception to disclosure of report 2010-47705. We note section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). In failing to comply with section 552.301, the department has waived its claim under section 552.108 and, therefore, may not withhold any information responsive to the first request under this exception. We note in waiving section 552.108 for the information responsive to the first request, the department also waived section 552.108 with respect to report 2010-47705, which is responsive to the second request. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to report 2010-47705. We will also consider your arguments under section 552.101 for the remaining 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides 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, 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.

(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;

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). You state the submitted information pertains to investigations of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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). Thus, we find the submitted information generally falls within the scope of section 261.201 of the Family Code.

However, with respect to report 2010-47705, we note the first requestor is a parent of the child victim, and is not alleged to have committed the alleged child abuse or neglect. Accordingly, the department may not withhold report 2010-47705 from the first requestor under section 261.201(a). *Id.* § 261.201(k). Although the second requestor is also a parent of the child victim listed in report 2010-47705, this requestor is suspected of having committed the alleged abuse; thus, this requestor does not have a right of access under section 261.201(k). Thus, we conclude the department must withhold report 2010-47705 in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Regarding the first requestor, we note section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Further, we note that section 261.201(l)(2) states

that before a parent may inspect records 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). We will address the department's assertion of common-law privacy for this report.

With respect to report 2009-48348, we note the second requestor is a parent of the child victims, and is not alleged to have committed the alleged child abuse or neglect in this report. Accordingly, the department may not withhold report 2009-48348 from the second requestor under section 261.201(a). *Id.* § 261.201(k). As noted above, section 261.201(1)(2) states that before a parent may inspect records 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). Accordingly, we consider whether report 2009-48348 may be withheld from the second requestor.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

- (1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and
- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Id. § 58.007(c), (e), (j). Report 2009-48348 involves juvenile delinquent conduct occurring after September 1, 1997; therefore, this report is subject to section 58.007(c). However, section 58.007(e) allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). We note the second requestor is the parent or guardian of the juvenile offender; therefore, report 2009-48348 may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c). *See id.* § 58.007(e). Section 58.007(j)(1), however, requires the redaction of any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses. *See id.* § 58.007(j)(1). Accordingly, the department must redact personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address your assertion of common-law privacy for this report.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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). You assert reports 2010-47705 and 2009-48348 are subject to common-law privacy. We note, however, the requestors are parents of the children whose privacy rights are at issue and, therefore, have a special right of access to information that would ordinarily be withheld to protect the individuals' privacy interests. *See Gov't Code* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Accordingly, the department may not withhold any portion of reports 2010-74405 and 2009-48348 from these requestors under section 552.101 in conjunction with common-law privacy.

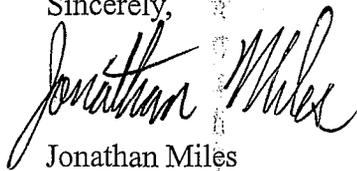
In summary, the department must withhold report 2010-47705 from the second requestor, pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. When releasing report 2010-47705 to the first requestor, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. When releasing

report 2009-48348 to the second requestor, the department must withhold the personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.²

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 409913

Enc. Submitted documents

c: Requestors
(w/o enclosures)

²We note that because the requestors have a special right of access to the information at issue in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.