



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2011

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2011-09137

Dear Ms. Bull:

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# 422193 (reference nos. 3753-041311, 3826-042111).

The Arlington Police Department (the "department") received two requests for reports related to a specific address. The first request seeks reports from November 17, 2010 to April 12, 2011. The second request seeks reports from November 12, 2010 to April 20, 2011. You state that the department has released some responsive information to the second requestor.¹ You claim that 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(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 stated 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

¹If the information released to the second requestor is also responsive to the first request, then the department must release that information to the first requestor as well. See Gov't Code § 552.007(b) (prohibiting selective disclosure of information to public).

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* Gov't Code § 552.301(e). You state that the department received the first request for information on April 12, 2011. You also state that the department was closed for business on April 22, 2011. Thus, the fifteen-business-day deadline for the first request was May 4, 2011. *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). However, the department did not submit responsive "Calls-For-Service Details" for call number 110650903 for our review until May 5, 2011.² Consequently, we find the department failed to comply with the requirements of section 552.301 regarding this information.

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.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-2 (Tex. App.—Austin 1990, no writ); Tex. Att'y Gen. ORD-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. Tex. Att'y Gen. ORD-150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, 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. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 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

²We note that the "Calls-For-Service Details" for call number 110650903 were submitted for our review as responsive to the second request. However, they are responsive to the first request as well.

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find that some of the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261. *See id.* § 261.001 (defining “abuse” 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, the information we have marked falls within the scope of section 261.201(a). As you do not state that the department has adopted a rule that governs the release of this type of information, we assume that none exists. Given that assumption, we conclude the information we have marked is confidential pursuant to section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code. However, you do not explain, nor does the information reflect, how the remaining information was actually used or developed in an investigation under chapter 261. Therefore, we find that you have failed to establish the applicability of section 261.201 to the remaining information and it may not be withheld under section 552.101. As you do not raise any other exceptions to disclosure, the remaining information must be released to the second requestor.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

³The remaining information that must be released to the second requestor is not responsive to the first request.

Ref: ID# 422193

Enc. Submitted documents

c: Requestors
(w/o enclosures)