



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2012

Ms. S. McClellan  
Assistant City Attorney  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-07415

Dear Ms. McClellan:

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# 453878 (DPD Request No. 2012-02374).

The Dallas Police Department (the "department") received a request for information pertaining to a specified report and any other reports pertaining to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 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. Section 552.301(b) requires that a governmental body 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). The department states it received the request for information on February 27, 2012. Because you do not inform this office the department was closed for business any days between February 27, 2012, and March 12, 2012, we find the department's ten-business-day deadline was March 12, 2012. The department requested a ruling from this office in an envelope postmarked March 13, 2012. *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). As such, 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 and must be released unless the 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, 381-82 (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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You raise sections 552.101 and 552.130 of the Government Code, which can provide compelling reasons to withhold information. Therefore, we will consider the applicability of these exceptions 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 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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.

Fam. Code § 261.201(a), (k). Upon review, we agree the reports you have marked pertain to investigations of alleged or suspected child abuse; thus, the marked reports fall within the scope of section 261.201 of the Family Code. *See 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). In this instance, the information at issue demonstrates the requestor is a parent of the alleged child victims listed in the marked reports. However, the requestor is the individual alleged to have committed the suspected abuse; thus, the requestor does not have a right of access under section 261.201(k). *See* Fam. Code § 261.201(k). Accordingly, the department must withhold the three reports you have marked in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). We find the department must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the three reports you have marked in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information you have marked and the additional information we have marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>1</sup>

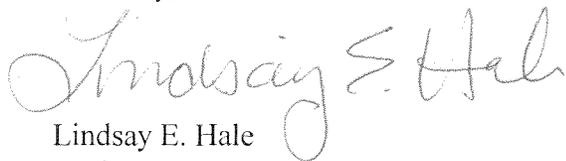
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>We note the requestor has a right of access under section 552.023 of the Government Code to some of her private information being released. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Because such information is confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in dark ink and is positioned above the typed name.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 453878

Enc. Submitted documents

c: Requestor  
(w/o enclosures)