



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-10237

Dear Ms. Evans:

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# 457785 (Houston GC No. 19592).

The Houston Police Department (the "department") received a request for all reports, pictures, calls for service, and call slips pertaining to a specified address for the years 2007 to 2010, and another address for the years 2004 to 2007, as well as a specified report. 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 note you have not submitted for our review any information responsive to the request related to one of the specified addresses for the years 2004 to 2007 and the specified report. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you acknowledge the department did not comply with its fifteen-business-day deadline under section 552.301(e) of the Government Code. Gov't Code § 552.301(e). 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 a compelling reason exists to withhold the information from disclosure. *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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 at 2 (1977). You raise section 552.101 as an exception to disclosure. As section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception 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. Section 261.201 provides in relevant part:

(a) [T]he 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.

(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; and

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

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261), *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261.201). You state the department has not adopted any specific rule that governs the release of this type of information. Accordingly, we find Exhibit 2 is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.¹ We note the requestor in this instance is the parent of the child victim named in Exhibit 3 and is not alleged to have committed the suspected abuse. Therefore, Exhibit 3 may not be withheld from this requestor on this basis. *See id.* § 261.201(k). However, section 261.201(l)(3) of the Family Code requires the identity of the reporting party to be redacted from any information being released under section 261.201(k). *Id.* § 261.201(l)(3). Accordingly, the department must withhold the identity of the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

We note Exhibit 3 contains a driver’s license number. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release.² Gov’t Code § 552.130(a)(1). Accordingly, the department must withhold the driver’s license number we have marked in Exhibit 3.

In summary, the department must withhold Exhibit 2 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the identity of the reporting party marked under section 552.101

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information under section 552.101 in conjunction with common-law privacy.

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

of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. The department must withhold the driver's license number marked under section 552.130 of the Government Code. The remaining information must be released.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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

Ref: ID# 457785

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ Because the requestor has a special right of access to the information being released in this instance, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office. See Fam. Code § 261.201(k); Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).