



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2012

Ms. Michele Tapia  
Assistant City Attorney  
City of Carrollton  
1945 East Jackson Road  
Carrollton, Texas 75006

OR2012-15448

Dear Ms. Tapia:

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# 470700.

The Carrollton Police Department (the "department") received a request for all offense and arrest reports related to the requestor's client.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered your claims 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) 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). You state the department received

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<sup>1</sup>Section 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. However, in this instance, the requestor has a right of access to his client's social security number. *See generally id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

the request for information on August 20, 2012.<sup>2</sup> Accordingly, the department's ten-business-day deadline was September 4, 2012. However, the envelope in which you submitted your request for a decision from this office bears a meter-mark of September 5, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the procedural requirements of section 552.301.

A governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See 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). 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 sections 552.101, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption, we will consider the department's arguments under these exceptions.

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 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 [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.

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<sup>2</sup>We note September 3, 2012 was a holiday. This office does not count holidays as business days for the purpose of calculating a governmental body's deadlines under the Act.

(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). Report number 2004-002183 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, report number 2004-002183 is confidential under section 261.201(a). Although the requestor’s client is a parent of the alleged child victim, the submitted information reflects the parent is suspected of having committed the alleged abuse or neglect. Accordingly, report number 2004-002183 may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k) (parental exception to section 261.201(a) inapplicable where parent alleged to have committed abuse or neglect at issue). Thus, the department must withhold report number 2004-002183 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 provides, in relevant part:

(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:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). Thus, under section 58.007, law enforcement records relating to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997 are confidential. *See id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007(c), a "child" is a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find report number 2011-002831 relates to a juvenile engaged in delinquent conduct or conduct indicating a need for supervision on or after September 1, 1997. Thus, report number 2011-002831 is confidential under section 58.007(c). However, in this instance, the requestor's client is the parent of the juvenile offender listed in the report at issue. Therefore, this requestor has a right to inspect information concerning his client's child under section 58.007(e). *Id.* § 58.007(e). Accordingly, the department may not withhold this report from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, section 58.007(j)(2) further provides that information subject to any other exception to disclosure under the Act or other law must be redacted before a governmental body releases information pursuant to section 58.007(e). *See id.* § 58.007(j)(2). Thus, we will consider your remaining argument against disclosure of report number 2011-002831.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). We note section 552.130 protects personal privacy. Thus, the requestor has a special right of access to his client's private information. *See id.* § 552.023(a) (person or a person's authorized representative has special right of access, beyond the right of general public, to information held by a 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 requests information concerning himself). Thus, the department may not withhold the motor vehicle record information pertaining to the requestor's client under section 552.130 of the Government Code.

You also claim the e-mail addresses you have marked are subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). However, the e-mail addresses at issue belong to the requestor's client, to which the requestor has a right of access pursuant to section 552.137(b). *See id.* § 552.137(b). Consequently, the department may not withhold the marked e-mail addresses from this requestor under section 552.137 of the Government Code.

In summary, the department must withhold report number 2004-002183 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The remaining submitted information must be released.<sup>3</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.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>Because the requestor has a special right of access to some of the information being released, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.

**Ref: ID# 470700**

**Enc. Submitted documents**

**c: Requestor  
(w/o enclosures)**