



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 7, 2012

Mr. Jason M. Rammel  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2012-17888

Dear Mr. Rammel:

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# 470494.

The City of Hutto (the "city"), which you represent, received a request for information pertaining to a specified investigation. You state the city has released some of the requested information but claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Initially, we must address the city'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. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). You inform us the city received the request for information on August 21, 2012 and we understand the city was closed for business on September 3, 2012. Thus, the city's ten-business-day deadline to request a ruling was September 5, 2012. However, the envelope containing your request for a ruling from this office is postmarked September 6, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of

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<sup>1</sup>We note the submitted information contains social security numbers. 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.

documents sent via first class United States mail). Therefore, the city failed to comply with the procedural requirements mandated by 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 requested information is public and must be released 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the city's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the city may not withhold any of the submitted information under section 552.108. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption.<sup>2</sup> Therefore, we will consider whether these sections require you to withhold 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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part as follows:

(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>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(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 find some of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Thus, this information is within the scope of section 261.201(a). However, the requestor, who is not alleged to have committed the suspected abuse, may be a managing conservator or other legal representative of the child victim. Thus, we must rule conditionally. If the requestor is not a managing conservator or other legal representative of the child victim, then the city must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a) of the Family Code. If, however, the requestor is a managing conservator or other legal representative of the child victim, then the city may not withhold the information at issue from this requestor under section 552.101 on the basis of section 261.201(a). *See id.* § 261.201(k).

Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov’t Code § 552.130(a). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information. *See Gov’t Code § 552.023(a)* (“[a] person or a person’s authorized representative has a special right of

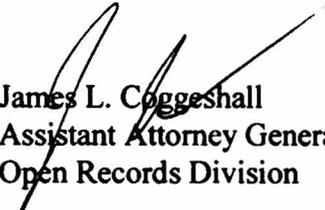
access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, the city must withhold the motor vehicle record information pertaining to other individuals, which we have marked, under section 552.130.

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if the requestor is not a managing conservator or other legal representative of the child victim; however, the city may not withhold the information at issue on that ground if the requestor is a managing conservator or other legal representative of the child victim. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.<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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

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<sup>3</sup>Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). Thus, if the city receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the city to redact the driver's license number of the requestor.

Ref: ID# 470494

Enc. Submitted documents

c: Requestor  
(w/o enclosures)