



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2012

Ms. Jordan Hale
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2012-19083

Dear Ms. Hale:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 472188 (PIR No. 12-34071).

The Office of the Attorney General (the "OAG") received a request for the video, audio, photographs, and exhibits pertaining to four specified cases. The OAG released some information to the requestor and argues the remainder is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the OAG's claimed exceptions and have reviewed the submitted sample of information.¹

First, the OAG acknowledges it failed to comply with section 552.301(e) by its untimely submission of a portion of the requested information. Gov't Code § 552.301(e) (governmental body must submit copy of specific information requested or representative samples not later than fifteenth business day after date of receiving written request). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). The OAG asserts the information is confidential under section 552.101 of the Government Code. Because this section can provide a compelling reason for non-disclosure, we will consider its applicability.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses information made confidential by other statutes such as section 261.201(a) of the Family Code. Section 261.201(a) provides 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.

Fam. Code § 261.201(a). Upon review, we find the information in Exhibit B was used or developed in the OAG's investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *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). Therefore, this information falls within the scope of section 261.201. The OAG asserts it has not adopted a rule that governs the release of the information in this instance. Therefore, we conclude Exhibit B is confidential under section 261.201(a), and the OAG must withhold it under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

²Because section 261.201 of the Family Code is dispositive, we do not address the OAG's section 552.108 assertion.

Next, the OAG asserts the criminal history record information ("CHRI") in Exhibit C is confidential under section 411.083 of the Government Code. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes confidential CHRI that the Department of Public Safety ("DPS") maintains. Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). We agree the CHRI the OAG marked that is generated by TCIC and NCIC is confidential under section 411.083, and the OAG must withhold it under section 552.101 of the Government Code.

We next address the OAG's argument that some of the submitted information is confidential under the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). We agree the information the OAG marked is confidential under the MPA.

The OAG also asserts Exhibit C includes confidential mental health records. Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002 applies to "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." Health & Safety Code § 611.002. We agree the mental health records the OAG marked must not be released under section 611.002.

Next, we consider the OAG's assertion under section 51.14 of the Family Code. At the time the criminal conduct occurred, the applicable law in effect was section 51.14 of the Family Code which provided, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, repealed by Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). The exceptions to former section 51.14(d) do not apply to the requestor. See Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Because the criminal conduct at issue occurred prior to January 1, 1996, we conclude the OAG must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 51.14(d) of the Family Code.

Section 552.101 also encompasses the constitutional right to privacy which protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. See *id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. See Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)).

In Open Records Decision Nos. 428 (1985) and 430 (1985), this office concluded inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional law. Thus, we conclude the OAG must withhold the entirety of the two pages it marked as protected by constitutional privacy pursuant to section 552.101 of the Government Code.

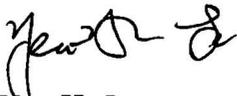
Lastly, section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130. The OAG must withhold the vehicle identification number and the license plate number under section 552.130 but must release the year of the vehicle.

In summary, the OAG must withhold the information under section 552.101 of the Government Code in conjunction with 1) section 261.201 of the Family Code; 2) section 411.083 of the Government Code; 3) section 159.002 of the Occupations Code; 4) section 611.002 of the Health and Safety Code; 5) section 51.14(d) of the Family Code; and 6) constitutional privacy. Also, the OAG must withhold the vehicle identification number and the license plate number under section 552.130 but must release the year of the vehicle.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 472188

Enc: Marked documents

c: Requestor
(w/o enclosures)