ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2013

Mr. Charles Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2013-09673

Dear Mr. Weir:

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# 489651 (COSA File # W014134).

The San Antonio Police Department (the "department") received a request for offense report number 12058658. You claim 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 must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures 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. *See* Gov't Code § 552.301(b). The department received the request for information on March 18, 2013. You do not inform us the department was closed for any business days between March 18, 2013, and April 1, 2013. Accordingly, you were required to provide the information required by subsection 552.301(b) by April 1, 2013. The envelope in which the department provided the information required by subsection 552.301(b) was postmarked April 3, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will address the applicability of section 552.101 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. Section 261.201 of the Family Code provides, in relevant part, as follows:

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

Fam. Code § 261.201(a), (k), (l)(2). You state the submitted information consists of a report of alleged or suspected child abuse made to the department. *See id.* §§ 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code, and includes sexual assault under Penal Code section 22.011), *see also* Penal Code § 22.011(c)(1) (defining "child" for purposes of Penal Code section 22.011 as person under 17 years of age). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note the requestor is a step-parent of the child victims listed in the information and she is not alleged to have committed the abuse. As such, this requestor may have a right of access to the information at issue pursuant to section 261.201(k). Fam. Code § 261.201(k). Thus, if the requestor is not the child victims' parent, managing conservator, or legal representative, or acting as the authorized representative of one of these individuals, then the submitted information must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. On the other hand, if the requestor is the child victims' parent, managing conservator, or legal representative, or is acting as the authorized representative of one of these individuals, the department may not use section 261.201(a) to withhold this information from the requestor. *Id.* § 261.201(k). Pursuant to section 261.201(l)(2), the department must redact any information that is otherwise excepted from required disclosure under the Act. *See id.* § 261.201(l)(2). Thus, we will address the applicability of section 552.130 of the Government Code to the submitted information.[1]

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find a portion of the submitted information consists of motor vehicle record information. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the requestor is not the child victims' parent, managing conservator, or legal representative, or acting as the authorized representative of one of these individuals, then the

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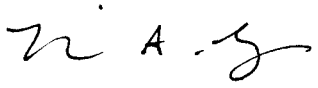
[1]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

submitted information must be withheld in its entirety from the requestor under section 552.101 in conjunction with section 261.201 of the Family Code. In the event the requestor is the child victims' parent, managing conservator, or legal representative, or acting as the authorized representative of one of these individuals, then the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.[2]

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 489651

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[2]In the event the requestor is the parent, managing conservator, or legal representative of the child victim, she has a special right of access to the information being released in this instance. *See* Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.