



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2003

Ms. Patricia E. Carls  
Brown & Carls, L.L.P.  
106 East 6<sup>th</sup> Street, Suite 550  
Austin, Texas 78701

OR2003-7719

Dear Ms. Carls:

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# 190088.

The Georgetown Police Department (the "Department"), which you represent, received a request for three specified incident reports.<sup>1</sup> You inform us that the Department has released one report to the requestor.<sup>2</sup> You assert the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We reviewed the information you submitted and considered your arguments.

Initially, we address the Department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general

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<sup>1</sup> You explain that one of the requested incident reports, number 03-18857, refers to a supplement of incident report number 03-18305.

<sup>2</sup> We note this report contains information which is generally considered private; however, in this instance, the requestor has a special right of access to her own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023 (providing that a person has a special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests). Because some of the information to be released to the requestor is confidential with respect to the general public, in the event the Department receives another request for this information from someone other than this requestor or her authorized representative, the Department must request another decision from this office.

for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). You state that the Department received the written request for information on August 6, 2003. Thus, the Department should have submitted a request for an attorney general decision no later than August 20, 2003. However, your letter, in which you request a decision from our office, has a postmark date of August 21, 2003. Consequently, we conclude that the Department failed to comply with the procedural requirements of section 552.301 in requesting this decision.

According 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 and must be released. A governmental body must release information presumed public under section 552.302, unless it demonstrates a compelling reason to withhold the information. *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). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You assert section 552.108 of the Government Code, a discretionary exception under the Act, which generally does not qualify as a compelling reason to withhold information from the public. *See* Open Records Decision No. 586 (1991) (providing that a governmental body may waive section 552.108 of the Government Code). Accordingly, the Department may not withhold the requested information under section 552.108 of the Government Code. However, we note the applicability of section 552.101 of the Government Code, which can provide a compelling reason to overcome the presumption of openness.

Section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision[,]" encompasses the confidentiality provisions of other statutes such as section 261.201 of the Family Code. Section 261.201 reads, in pertinent part, as follows:

(a) The 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.

Fam. Code § 261.201(a)(1), (2). Section 261.201 makes information regarding an investigation of suspected child abuse or neglect confidential. A portion of the submitted information concerns a report and investigation of alleged or suspected neglect made under chapter 261. Therefore, assuming the Department has not adopted regulations regarding release of this type of information, we conclude that the information we have marked in incident report number 3018305 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the Department must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup>

Further, we note that the submitted information at issue contains social security numbers that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the responsive records is confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under section 552.101 and the referenced federal provision.<sup>4</sup> However, we caution the Department that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the Department must withhold the information we have marked in incident report number 3018305 under section 552.101 of the Government Code in conjunction with

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<sup>3</sup> We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "DPRS"), a parent who is a requestor may be entitled to access to the DPRS's records. Section 261.201(g) of the Family Code provides that the DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the [DPRS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Fam. Code § 261.201(g).

<sup>4</sup> We note that the requestor has a right of access to her own social security number under section 552.023 of the Government Code.

section 261.201 of the Family Code. If applicable, the Department must withhold the social security number that does not belong to the requestor in accordance with federal law. The Department must release the remainder of the submitted information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Christen Sorrell". The signature is written in black ink and is positioned above the typed name.

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 190088

Enc: Submitted documents

c: Ms. Laura Fischer  
P.O. Box 1233  
Menard, Texas 76859  
(w/o enclosures)