



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2004

Ms. Karen Rabon
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2004-10669

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215584.

The Office of the Attorney General (the "OAG") received a request for the following information pertaining to a specific crime victim: the amounts and dates of payments made to the victim and all information regarding any criminal matters relating to the victim's qualification to receive compensation. The OAG has released the amounts of payments but claims that the dates of payments and responsive offense reports are excepted from disclosure under sections 552.101, 552.108, and 552.132 of the Government Code. We have considered your claimed exceptions to disclosure and have reviewed the submitted information.

First, the OAG acknowledges that it failed to submit Exhibit D within fifteen business days of its receipt of the request for information as required by section 552.301(e) of the Government Code. 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 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). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). The applicability of section 552.101 is a compelling reason as it makes information confidential.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Exhibit D is an offense report pertaining to a charge of indecency with a child. The OAG explains that for purposes of processing the victim's claim file, the OAG sought and received the offense report from the Austin Police Department (the "department"). *See* Fam. Code § 261.201(a) (information made confidential by this section may be disclosed only for purposes consistent with this code and applicable state law); Crim. Proc. Code art. 56.38 (upon request, law enforcement entity must release all reports to OAG for purpose of determining crime victim's compensation claim). Because the offense report in Exhibit D was used or developed in an investigation of child abuse by the department, the documents are within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit D is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the OAG must withhold Exhibit D from disclosure under section 552.101 of the Government Code as information made confidential by law.

Section 552.132 of the Government Code provides in pertinent part as follows:

(a) In this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:

(1) the name, social security number, address, or telephone number of the crime victim; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

(c) An election under Subsection (b) must be:

(1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and

(2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.

Gov't Code § 552.132. For the claim file at issue, the victim elected to withhold her identifying information from disclosure under section 552.132(b). In most cases, the OAG would only be allowed to withhold the victim's identifying information from public disclosure. In this instance, however, the requestor knows the identity of the victim. Thus, withholding only the identifying information would not effectuate the purpose of the statute. Accordingly, we agree that the OAG must withhold Exhibits B and C under section 552.132 of the Government Code.

In summary, the OAG must withhold Exhibits B and C under section 552.132 of the Government Code and Exhibit D under section 261.201 of the Family Code.

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); *Tex. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 215584

Enc: Submitted documents

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