



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2006

Ms. Nancy Hagan
Executive Director
Alliance For Children
908 Southland Avenue
Fort Worth, Texas 76104

OR2006-03369

Dear Ms. Hagan:

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# 245712.

The Alliance for Children (the "alliance") received a request for all emails and phone records regarding a named employee during a certain time period. You inform us that the alliance does not maintain any phone records on employees.¹ We understand you to claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.² We have also considered comments submitted by an attorney for the named employee. *See* Gov't Code § 552.304 (providing that interested party may submit comments, stating why information should or should not be released).

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we must address the alliance's obligations under section 552.301 of the Government Code. Subsections (a) and (b) of section 552.301 require a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Gov't Code § 552.301 (a), (b). You did not raise any exceptions until after the ten-business-day deadline had passed. However, this office has held that a compelling reason exists to withhold information when the information is confidential under other law or affects third party interests. *See* Open Records Decision No. 150 (1977). Because section 552.101 can constitute such a compelling reason, we will consider whether this exception applies to the submitted information.

However, we first note that Exhibits A and C may be subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the alliance must withhold Exhibits A and C under section 552.117 if the employee made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.³ The alliance may not withhold this information under section 552.117 if the named employee did not make a timely election to keep the information confidential.

Next, the attorney for the named employee claims that most of the remaining information is excepted under section 261.201 of the Family Code. 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 statute. Section 261.201 of the Family Code provides in relevant part:

(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

³As our ruling on Exhibits A and C is dispositive, we need not address your privacy claims for these documents.

an investigation under this chapter or in providing services as a result of an investigation.

Family Code § 261.201(a). The alliance states that Exhibits D through J pertain to the scheduling of appointments with alleged child abuse victims. The alliance does not, however, assert that this information is subject to section 261.201. Although the attorney for the named employee claims that this information is subject to section 261.201, he provides no arguments in support of this claim. Accordingly, this office has not been provided with sufficient facts to determine that Exhibits D through J were used or developed in providing services as a result of an investigation under chapter 261. *Id.* § 261.201(a)(2). Thus, the alliance may not withhold Exhibits D through J under section 261.201.

The alliance claims that Exhibit B and Exhibits D through J are subject to common law privacy. Section 552.101 also encompasses the doctrine of common law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In Open Records Decision No. 393 (1983), this office concluded that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common law privacy. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982). Thus, information revealing the identity of alleged victims of sexual assault in Exhibits D through J, which we have marked, must be withheld under section 552.101 in conjunction with common law privacy.

This office has also found that certain kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the medical information in Exhibit B that is subject to common law privacy and must be withheld under section 552.101.

Finally, section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). You do not inform us that the alliance has received consent to release the e-mail address in Exhibit B, or that it is of a type specifically excluded by section 552.137(c). Therefore, the alliance must withhold the marked e-mail address in Exhibit B pursuant to section 552.137.

In summary, the alliance must withhold Exhibits A and C under section 552.117 if the employee made a request for confidentiality under section 552.024 prior to the date on which

the request for this information was made. We have marked information revealing the identity of alleged victims of sexual assault in Exhibits D through J and medical information in Exhibit B that must be withheld under section 522.101 in conjunction with common law privacy. The alliance must withhold the marked e-mail address in Exhibit B pursuant to section 552.137. The remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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 black ink, appearing to read 'José Vela III', with a stylized flourish at the end.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 245712

Enc. Submitted documents

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