



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2006

Chief William A. Young  
Chief of Police  
Deer Park Police Department  
P. O. Box 700  
Deer Park, Texas 77536-0700

OR2006-08116

Dear Chief Young:

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# 254885.

The Deer Park Police Department (the "department") received a request for twenty-nine categories of information pertaining to two named officers, including among other things, citizen complaints against the named officers, reports filed by the officers, financial information concerning the department and the named officers, and the qualifications and applications of the officers. You state that some of the requested information does not exist.<sup>1</sup> You also state that the department will release some of the requested information. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.<sup>2</sup>

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<sup>1</sup>We note that the Act does not require the department to release information that did not exist when it received this request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We 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 note that most of the submitted personnel information was the subject of a previous ruling issued by this office as Open Records Letter No. 2006-07933 (2006). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on this ruling as a previous determination and withhold or release the information at issue in accordance with Open Records Letter No. 2006-07933. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we must address the department's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), within fifteen business days of receiving an open records request, a governmental body that wishes to withhold information from disclosure must submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(4). You state that the department received the written request for information on May 3, 2006. Based on this date, the fifteenth business day following the department's receipt of the request was May 24, 2006. However, the department did not submit the representative sample of incident reports until May 31, 2006. We therefore find that the department failed to comply with the procedural requirements of section 552.301 with respect to the submitted incident reports. *See id.*

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 information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You claim that the representative sample of incident reports are excepted under section 552.101; because section 552.101 can provide a compelling reason to withhold information, we will address your argument under this section for the incident reports.

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. Section 552.101 encompasses section 261.201(a) of the Family Code, which 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.

Fam. Code § 261.201(a); *see also* Open Records Decision No. 440 at 2 (1986) (addressing statutory predecessor). You state that the representative sample of incident reports you have submitted to this office are excepted under section 261.201. We note that three of the submitted incident reports at issue were used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, we find that these reports fall 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. Therefore, the incident reports we have marked are confidential pursuant to section 261.201 of the Family Code and must be withheld in their entirety under to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). You also claim that the remaining incident reports are excepted under section 261.201. Although you have not submitted any arguments regarding the nature of your investigation, you have cited to several definitions of “neglect” as found in section 261.001 of the Family Code. Specifically, you cite to subsection 261.001(4)(A) which provides that the leaving of a child in a situation exposing the child to a substantial risk of physical or mental harm, without arranging for necessary care, and a demonstration of an intent not to return by a parent, guardian, or conservator of the child constitutes neglect. *See* Fam. Code § 261.001(4)(A). You also cite to subsection 261.001(4)(B)(1) which provides that the placing of a child or failure to remove a child from a situation that requires judgment or actions beyond a child’s level of maturity, physical, or mental abilities that results in bodily injury or substantial risk of immediate harm to the child constitutes neglect. *See id.* § 261.001(4)(B)(1). Under section 552.301 of the Government Code, a governmental body must explain how a claimed exception is applicable to the information at issue. *See* Gov’t Code § 552.301(e)(1)(A). You have not explained, nor can we discern, how the remaining incident reports document conduct that falls under these, or any of the remaining, definitions of neglect as found in chapter 261. Thus, you have failed to demonstrate that these incident reports were used or developed in an investigation of neglect as defined in chapter 261 of the Family Code. Accordingly, section 261.201 is not applicable to the remaining incident reports and the department may not withhold any of this information on that basis.

We note, however, that the remaining incident reports contain information that is subject to common law privacy. Section 552.101 of the Government Code encompasses the doctrine

of common law privacy. This office has found that a compilation of an individual's criminal history record information is highly embarrassing information that is generally not of legitimate concern to the public. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). We have marked the criminal history information in the remaining incident reports that must be withheld pursuant to section 552.101 in conjunction with common law privacy.

We note that the remaining incident reports contain the social security numbers of private individuals. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security numbers of individuals it has marked, along with the social security numbers we have marked, under section 552.147.<sup>3</sup>

We also note that the remaining incident reports contain Texas motor vehicle record information. Additionally, the personnel records contain this same type of information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information you have marked. *See* Gov't Code § 552.130. We have also marked a small amount of additional information in both the incident reports and the personnel records to be withheld pursuant to section 552.130.

The personnel records also include personal financial information. This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common law privacy. Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). Accordingly, the personal financial information we have marked in the personnel records is excepted from disclosure under section 552.101 in conjunction with common law privacy.

We also note that the personnel records include a W-4 form. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code, which is also encompassed by section 552.101 of the Government Code, renders tax return information

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<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). Therefore, the department must withhold the W-4 form we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

Additionally, you claim that certain information contained in the personnel records is subject to section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Therefore, the information we have marked in the submitted documents must be withheld from the requestor under section 552.117(a)(2).

We also note that a portion of the personnel records is subject to section 552.136 of the Government Code. Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the department must withhold the account numbers we have marked pursuant to section 552.136.

In summary, the department must continue to rely on Open Records Letter No. 2006-07933 as a previous determination with regard to the submitted information that is identical to the information previously requested and ruled upon by this office in that prior ruling. The department must withhold: 1) the incident reports we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; 2) the W-4 form we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code; 3) the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common law privacy; 4) the information we have marked pursuant to section 552.117(a)(2) of the Government Code; 5) the marked Texas motor vehicle record information pursuant to section 552.130 of the Government Code; 6) the account numbers we have marked pursuant to section 552.136 of the Government Code; and 7) the social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released 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, 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,



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Open Records Division

CMD/krl

Ref: ID# 254885

Enc. Submitted documents

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(w/o enclosures)