



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2007

Mr. Mike McMillen  
Assistant City Attorney  
City of Amarillo - Legal Department  
P. O. Box 1971  
Amarillo, Texas 79105-1971

OR2007-02388

Dear Mr. McMillen:

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# 272431.

The Amarillo Police Department (the "department") received a request for information related to a particular incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed 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 section 261.201 of the Family Code. Section 261.201(a) 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.

...

(h) This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code.

Fam. Code § 206.201(a), (h). You claim that the submitted information is excepted from disclosure under section 261.201. However, section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *See id.* § 261.201(h). We note that the incident at issue allegedly occurred at a child care facility that is regulated by the Texas Department of Family and Protective Services under chapter 42 of the Human Resources Code. We therefore find that section 261.201 is not applicable to the investigation at issue.

You also assert that the submitted information is excepted under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. [.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You state that the incident has not resulted in a conviction or deferred adjudication. Based on this statement, we cannot determine whether the department has concluded this investigation. Therefore, you have not demonstrated the applicability of section 552.108(a)(2) to the submitted information.

We note that the submitted records contains a Texas driver’s license number.<sup>1</sup> Section 552.130 of the Government Code provides in part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]

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<sup>1</sup> Unlike other exceptions to disclosure, this office will raise sections 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov’t Code §§552.007, . 352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Gov't Code § 552.130(a). Thus the department must withhold the Texas driver's license number that is marked under section 552.130 of the Government Code.<sup>2</sup> The remaining information must be released to the requestor.

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.

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<sup>2</sup>We note that a portion of the remaining information would not be releasable to the general public. However, the requestor is the authorized representative of the parents of the child at issue. Thus, the requestor has a special right of access under section 552.023 of the Government Code to the information that would ordinarily be withheld to protect the child's common-law privacy, and such information cannot be withheld from the requestor on that basis. *See* Gov't Code § 552.023 (person or the parent of minor has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's or that person's child's privacy interest). The department should again seek our decision if it receives another request for this information from a person other than the requestor or her authorized representative.

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 "Justin D. Gordon". The signature is fluid and cursive, with a large initial "J" and "G".

Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/krl

Ref: ID# 272431

Enc. Submitted documents

c: Ms. Susan Grim  
P. O. Box 9620  
Amarillo, Texas 79105-9620  
(w/o enclosures)