



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2007

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2007-06354

Dear Mr. Weir:

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# 279117.

The San Antonio Police Department (the "department") received a request for a specified incident report. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act, chapter 552 of the Government Code. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us that the department received this request on

November 30, 2006. However, you did not request a ruling from our office or submit the information at issue until March 19, 2007. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

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 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 section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your arguments under this exception.

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. You contend that the submitted information is made confidential under section 261.201 of the Family Code, which provides in pertinent 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, audiotapes, videotapes, 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 § 261.201(a), (h). You state that the submitted information was used or developed in an investigation of alleged child abuse. 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, and we determine that the department may not withhold any of the submitted information under section 552.101 on that basis.<sup>1</sup> As you raise no further exceptions against the disclosure of the submitted information, it must be released to the requestor.<sup>2</sup>

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

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<sup>1</sup>We note that the submitted documents contain confidential information that is not subject to release to the general public. However, as the attorney representing the minor with the privacy interest, the requestor has a special right of access to this information. Gov't Code § 552.023 (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or her clients, the department should again seek our decision.

<sup>2</sup>We note that the submitted information contains the social security number of the minor's parent. 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. Because the requestor is the attorney representing the minor, we can assume the parent is the client of the requestor. Therefore, the requestor has a special right of access to the social security number under section 552.023 of the Government Code.

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,



Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 279117

Enc. Submitted documents

c: Ms. Veronica Valencia  
Hernandez Law Firm  
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(w/o enclosures)