



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 17, 2009

Mr. Robert E. Reyna  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, TX 78283-3966

OR2009-03495

Dear Mr. Reyna:

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# 337461 (SAPD ORR# 2008-2266).

The San Antonio Police Department (the "department") received a request for a police report pertaining to a specified incident, call for service reports pertaining to specified city blocks over a specified time period, and forty-five specified police reports. You state you are releasing all but three responsive police reports to the requestor. You claim that the submitted police reports are 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 section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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. *See id.* § 552.301(e). In this instance, the department received the request for information on December 3, 2008 but did not request a ruling or submit the requested

information for our review until January 8, 2009. Consequently, we find that the department failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Section 552.101 can provide a compelling reason to overcome this presumption; therefore, we will consider your argument under this section.

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. 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). You assert that all three submitted police reports relate to investigations of alleged child abuse or neglect and are thus confidential under section 261.201 of the Family Code. Based on your representations and our review, we agree that report No. 80581999 is subject to section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold report No. 80581999 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). However, report No. 80356470 involves an assault of a twenty-eight year-old victim. Further, report

No. 80532060 reflects that it was part of an investigation of a infant's accidental homicide from a drive-by shooting. We find you have failed to demonstrate how these two reports were used or developed in investigations of child abuse under chapter 261, and they may not be withheld under section 552.101 on this basis.

We note, however, that report No. 80356470 contains Texas motor vehicle record information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold report No. 80581999 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must also withhold the information we marked within report No. 80356470 under section 552.130 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eb

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 337461

Enc. Submitted documents

c: Requestor  
(w/o enclosures)