



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2009

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2009-14665

Dear Ms. McClellan:

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# 358609 (DPD Request Numbers 2009-6103 and 2009-6749).

The Dallas Police Department (the "department") received two requests for a specified offense report. One of the requestors also requested accident photos associated with the offense report. You claim that the submitted 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 note you have not submitted the requested photographs. To the extent any information responsive to that portion of the request existed on the date the department received that request, we assume you have released it to the requestor. If you have not released any such information, you must release it at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

Next, the department acknowledges, and we agree, that, for one of the requests, it failed to comply with the procedural requirements of section 552.301 of the Government Code. *See Gov't Code § 552.301.* Pursuant to section 552.302 of the Government Code, a

governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where an exception designed to protect the interest of a third party is applicable. *See* Open Records Decision No. 150 at 2 (1977). You claim the submitted information is confidential under section 552.101 of the Government Code. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will consider whether or not the submitted information is excepted under the Act.

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 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the department or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201. You state the submitted report was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Based on your representations and our review, we find the submitted report is generally confidential under section 261.201 of the Family Code. However, the requestors are the parents of the child who is the subject of the report, and the parents are not alleged to have committed the suspected abuse. In this instance, the department may not use section 261.201(a) to withhold this report from these requestors. *Id.* § 261.201(k). However, section 261.201(l)(3) requires that before a parent may inspect such records, the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Therefore, with the exception of the identity of the reporting party, which we have marked, the department must release the submitted information to the requestors.<sup>1</sup>

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

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<sup>1</sup>We note the information being released contains confidential information regarding the alleged child victim to which the requestors have a right of access as the child’s parents. *See* Fam. Code § 261.201(k). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 358609

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)