



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2009

Mr. Bryan McWilliams  
Public Safety Legal Advisor  
Assistant City Attorney  
City of Amarillo  
200 South East Third Avenue  
Amarillo, Texas 79101-1514

OR2009-17461

Dear Mr. McWilliams:

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# 363818 (City of Amarillo Reference # 09-1123).

The Amarillo Police Department (the "department") received a request for information pertaining to two specified report numbers. You indicate you have released one of the requested reports to the requestor. You claim that the remaining 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 procedural obligations under the Act. Pursuant to section 552.301(b), a governmental body 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). In this instance, you state the department received the request for information on September 16, 2009. Accordingly, the ten business-day deadline was September 30, 2009. However, you did not request a decision from this office until October 1, 2009. Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting the decision from our office. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail).

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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will consider the applicability of this exception to 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. 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 of Family and Protective Services] 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(a), (k), (l). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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 representation and our review, we find that this information is within the scope of section 261.201. 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. Thus, we find the submitted information is generally confidential under section 261.201 of the Family Code. In this instance, however, the requestor may be the authorized representative of the child victims’ mother, and the mother is not alleged to have committed the alleged or suspected abuse. Accordingly, the requestor may have a right of access to the submitted information under section 261.201(k). *See id.* § 261.201(k). As it is not clear whether the requestor is the authorized representative of the children’s mother, we must rule conditionally.

If the requestor is not the authorized representative of the child victims’ mother, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the requestor is the authorized representative of the child victims’ mother, pursuant to section 261.201(k), the department may not withhold the submitted information from the requestor under section 261.201(a). *Id.* Section 261.201(l)(2) states, however, any

information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). You also assert the submitted information is excepted from public disclosure under section 552.101 in conjunction with common-law privacy. Accordingly, if the requestor is the victims' mother's authorized representative, we consider your remaining argument against disclosure.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found the identities of juvenile victims of abuse or neglect are excepted from public disclosure under common-law privacy. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Although some of the submitted information is generally subject to common-law privacy, the requestor may be the authorized representative of the mother of the children whose privacy interests are implicated. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the requestor is the mother's authorized representative, pursuant to section 552.023, the requestor has a right of access to the information which would otherwise be confidential under common-law privacy. Accordingly, the department may not withhold any portion of the information at issue under section 552.101 of the Government Code on that basis.

However, we note section 261.201(1)(3) of the Family Code provides that before a parent can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. Fam. Code § 261.201(1)(3). Accordingly, if the requestor is the authorized representative of the victims' mother, the department must withhold the reporting party's identity, which we have marked, under section 552.101 in conjunction with section 261.201(1)(3) of the Family Code.

In summary, if the requestor is not the authorized representative of the child victims' mother, the submitted information must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. If the requestor is the authorized representative, the department must withhold the reporting party's identifying information under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code, and release the remaining information.<sup>1</sup>

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<sup>1</sup>Under this scenario, the requestor has a special right of access to the information being released. If the department receives another request for this same information from an individual who does not have a right of access to the information, the department should resubmit the information to us and request another ruling. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 363818

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)