



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 10, 2009

Mr. Samuel D. Hawk
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-17514

Dear Mr. Hawk:

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# 363781 (DPD ORR No. 2009-7594).

The Dallas Police Department (the "department") received a request for information relating to a fatal accident. 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 information you submitted.

We first note, and you acknowledge, that the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claim under

section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address that 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. This exception encompasses information that other statutes make confidential. Section 550.065 of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transportation Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the specific location of the accident; and (3) the name of any person involved in the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* The submitted information includes a crash report that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has not provided the department with two of the three items of information specified by section 550.065(c)(4). Therefore, the crash report we have marked must be withheld from this requestor in its entirety pursuant to section 550.065(b) of the Transportation Code.

You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(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 [Texas 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); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). You contend that all of the remaining information is confidential under section 261.201. We note that some of the remaining information is related to an investigation of a traffic accident. You have not demonstrated that the information relating to the accident investigation was used or developed in an investigation under chapter 261 of the Family Code. We therefore conclude that the department may not withhold that information under section 552.101 of the Government Code on the basis of section 261.201(a) of the Family Code. The remaining information, however, consists of a report of an investigation of alleged child neglect by the Texas Department of Family and Protective Services (the “DFPS”) under chapter 261 of the Family Code. We therefore conclude that the information relating to the DFPS investigation, which we have marked, is confidential under section 261.201(a). We note that information may not be withheld on the basis of section 261.201(a) from a parent of a child who is the subject of alleged neglect, unless the parent is alleged to have committed the neglect. *See id.* § 261.201(k). In this instance, the requestor is a parent of the child who was the victim of the alleged child neglect. The marked information reflects, however, that the requestor is the person alleged to have committed the neglect. You do not indicate that the department has adopted a rule that governs the release of the marked information; thus, we assume that no such rule exists. We therefore conclude that the department must withhold the marked information under

section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ See Open Records Decision No. 440 at 2 (addressing predecessor statute).

You also raise section 552.101 in conjunction with common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). We note that the remaining information is related to an accident in which a vehicle struck and fatally injured a child. Common-law privacy is a personal right that lapses at death and does not protect information relating only to a deceased individual. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Nevertheless, the United States Supreme Court has held that surviving family members can have a privacy interest in information relating to their deceased relatives. See *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004). In this instance, however, the requestor is a parent of the deceased child. As such, the requestor has a right of access under section 552.023 of the Government Code to any remaining information relating to the child that the department might be required to withhold from the public on privacy grounds under *Favish*. See Gov't Code § 552.023.² Moreover, we find that none of the remaining information that concerns living individuals is either intimate or embarrassing or not a matter of legitimate public interest. We therefore conclude that the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary: (1) the department must withhold the marked accident report under section 550.065(b) of the Transportation Code; and (2) the department must withhold the

¹We note that a parent or legal representative of a child who is the subject of reported abuse or neglect may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. See Fam. Code § 261.201(g).

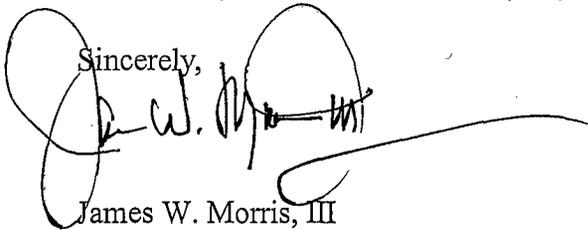
²Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining information must be released.³

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, 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 363781

Enc: Submitted information

c: Requestor
(w/o enclosures)

³In addition to the information relating to the requestor's child, the remaining information includes the requestor's Texas motor vehicle information, which the department would ordinarily be required to withhold under section 552.130 of the Government Code. Because that exception protects personal privacy, the requestor has a right to her own motor vehicle information under section 552.023. Should the department receive another request for these same records from a person who would not have a right of access to information that implicates this requestor's privacy interests, the department should resubmit these records and request another decision. See Gov't Code §§ 552.301(a), .302.