



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

Mr. Bryan Scott McWilliams
Assistant City Attorney
City of Amarillo
200 Southeast Third Avenue
Amarillo, Texas 79101-1514

OR2010-15853

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# 399070.

The Amarillo Police Department (the "department") received a request for all police reports the requestor has been named in. You claim 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.

Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). Further, pursuant to 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) 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. *Id.* § 552.301(e). The department states it received the present request for information on August 12, 2010. The department submitted its request for a decision from this office and the required information on August 30, 2010. Consequently, the department failed to comply with section 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 that the requested information is public and must be released. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *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 Open Records Decision No. 630 (1994). This office has held a compelling reason exists to withhold information when the information is confidential by another source of law. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). The applicability of section 552.101 is a compelling reason.

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. As you acknowledge, at the time the conduct occurred, the applicable law in effect was section 51.14 of the Family Code which provided, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). You do not indicate report number 1991-0081555 relates to a charge for which the department transferred the juvenile under section 54.02 of the Family Code¹ to a criminal court for prosecution, or that article 15.27 of the Code of Criminal Procedure² applies. Moreover, none of the exceptions to former section 51.14(d) appears to apply to the requestor. See Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (*repealed* 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)).

¹Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, *amended by* Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

²Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

Accordingly, we conclude the department must withhold report number 1991-0081555 under section 552.101 of the Government Code as information deemed confidential by law.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in part 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). Upon review, we find report number 2009-0036320 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, we find report number 2009-0036320 is generally confidential under section 261.201 of the Family Code. We note, however, the requestor is a parent of the child victim in report number 2009-0036320 and is not alleged to have committed the reported abuse. Therefore, the requestor is granted a right of access to the report under subsection 261.201(k). Fam. Code § 261.201(k). However, subsection 261.201(l)(1) states before a record concerning a child can be copied or inspected by the child’s parent under subsection 261.201(k), any personally identifiable information about a victim or witness under 18 years of age who is not the parent’s child must be redacted. *Id.* § 261.201(l)(1). Accordingly, the department must withhold the children’s information we have marked pursuant to 261.201(l)(1). Subsection 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(l)(2). We note report number 2009-0036320 includes information subject to section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a . . . driver’s license . . . issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). Accordingly, the department must withhold the Texas driver’s license number we have marked in report number 2009-0036320 pursuant to section 552.130 of the Government Code.³ Furthermore, subsection 261.201(l)(3) states the custodian of the record must redact the identity of the reporter before releasing the report to the parent. Fam. Code § 261.201(l)(3). Therefore, the department must withhold the identifying information of the reporter we have marked under subsection 261.201(l)(3). As such, with the exceptions of the identifying information of the children, the driver’s license number, and the identifying information of the reporter we have marked, the department must release report number 2009-0036320 to the requestor.⁴

In summary, the department must withhold report number 1991-0081555 under section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code. With the exceptions of the identifying information of the children, the driver’s license

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴In this instance, the requestor has a special right of access under section 261.201(k) of the Family Code 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 request another ruling. *See* Gov’t Code §§ 552.301, 302; Open Records Decision No. 673 (2001).

number, and the identifying information of the reporter we have marked, the department must release report 2009-0036320 to the requestor under section 261.201(k) of the Family Code.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eb

Ref: ID# 399070

Enc. Submitted documents

c: Requestor
(w/o enclosures)