



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2012

Ms. Valerie Brown
Deputy General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2012-06697

Dear Ms. Brown:

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# 452902 (Reference Nos. 12-0636 and 12-0637).

The Texas Department of Public Safety (the "department") received two requests from different requestors for information pertaining to the investigation of a named deceased individual. You indicate some information has been released to the requestors, with certain information redacted pursuant to 552.147 of the Government Code.¹ You also indicate the department will redact autopsy photographs under section 552.101 in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure pursuant to the previous determination in Open Records Letter No. 2011-15545 (2011). *See Gov't Code* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). 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.

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

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, 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, audiotapes, videotapes, 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 the information you have marked is confidential under section 261.201 of the Family Code. Upon review, we agree this information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 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). You state the department has not adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information you have marked is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review we find the information we have marked constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. You state the requestors do not fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You state you have redacted certain motor vehicle record information from the information you have released. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas, another state, or country is excepted from public release. Gov't Code § 552.130(a). On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as a driver's license number and government identification number, without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). Thus, the department may redact the driver's license numbers and government identification numbers under section 552.130. *Id.* However, license plate numbers and vehicle identification numbers are subject to subsection 552.130(a)(2), not subsections 552.130(a)(1) or (a)(3); therefore, this information may not be redacted under subsection 552.130(c). Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Thus, the department may redact Texas license plate numbers in accordance with Open Records Decision No. 684. However, we note vehicle identification numbers are also not subject to Open Records Decision No. 684 and thus may not be redacted without requesting an attorney general

decision. The department must withhold the vehicle identification numbers under section 552.130 of the Government Code.

In summary, the information you have marked must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The polygraph information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The vehicle identification numbers must be withheld under section 552.130. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 452902

Enc. Submitted documents

c: Requestors
(w/o enclosures)