



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2015

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Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

Mr. John Saenz
Crime Records Office
McAllen Police Department
P.O. Box 220
McAllen, Texas 78505-0220

OR2015-06928

Dear Mr. Garcia and Mr. Saenz:

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# 561325 (City of McAllen Request numbers W017883-020215, W017896-020215, W018469-030915).

The City of McAllen and the McAllen Police Department (collectively, the "city") received four requests from three requestors for information pertaining to a specified motor vehicle accident. The city states it has released some information to the requestors, including the CR-3 crash report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c)(4) (providing for release of accident report if requestor provides two of following three pieces of information: (1) date of accident, (2) name of any person involved in accident, and (3) specific location of accident). We understand some of the requested

information does not exist.¹ The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions the city claims and reviewed the submitted information.

Initially, we note the first requestor only seeks a statement from a named individual and blood test results pertaining to the specified motor vehicle accident. Thus, any additional information the city has submitted is not responsive to the first request. The city need not release non-responsive information to the first requestor.

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See Gov't Code* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). The city states it received the first request for information on February 2, 2015. While this office does not count holidays as business days for the purposes of calculating a governmental body's deadline under the Act, the city informs us its offices were open on February 16, 2015. Thus, the city's ten-business-day deadline was February 16, 2015. However, the city submitted the information required by section 552.301(b) in an envelope meter-marked February 17, 2015. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we determine the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision Nos. 630 (1994), 586 (1991), 319 (1982). This office has held a compelling reason exists to withhold information when third-party interests are at stake or when information

¹The Act does not require a governmental body that receives a request for information to create or release information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We understand the city to raise section 552.101 of the Government Code based on the substance of its argument.

is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Although the city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Because the city failed to comply with section 552.301, the city has waived its claim under section 552.108 for the information responsive to the first request, which we have marked. Accordingly, this information may not be withheld under section 552.108 of the Government Code. However, we will consider the city's argument under section 552.108 for the remaining information. Further, because section 552.101 of the Government Code makes information confidential under the Act and can provide a compelling reason to withhold information, we will consider the city's argument under section 552.101 for 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides, in pertinent 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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as a 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). The city does not indicate it has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Thus, we find the submitted information is confidential pursuant to section 261.201(a) of the Family Code and must be withheld from the second and third requestors in its entirety under section 552.101 of the Government Code.³ However, we note the first requestor is either a legal representative of one of the alleged victims, or a legal representative of that alleged victim’s parent. *See id.* § 261.201(k). We further note we are unable to determine the age of this alleged victim. Therefore, we must rule conditionally. To the extent the alleged victim at issue was not a child as defined by section 101.003 of the Family Code at the time of the motor vehicle accident at issue, the first requestor does not have a right of access to the information responsive to her request, which we have marked, pursuant to section 261.201(k) of the Family Code. In that instance, the city must withhold the information at issue from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the alleged victim at issue was a child as defined by section 101.003, pursuant to section 261.201(k), the city may not withhold the information at issue from the first requestor on the basis of section 261.201(a) of the Family Code. *See id.* In that instance, however, section 261.201(l)(2) of the Family Code states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.*

³As our ruling is dispositive for this information, we need not address the city’s arguments against its disclosure.

§ 261.201(1)(2). Accordingly, we will consider the city's remaining argument against disclosure of the information at issue.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides, in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007 of the Family Code). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *See id.* § 51.02(2). Upon review, we find the information at issue involves a suspect aged seventeen years or older, and does not list a juvenile as a suspect, offender, or defendant. Thus, the information at issue is not confidential under section 58.007(c) of the Family Code and may not be withheld under section 552.101 of the Government Code on that basis.

In summary, the city must withhold the submitted information from the second and third requestors in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the alleged victim at issue was not a child as defined by section 101.003 of the Family Code at the time of motor vehicle accident at issue, the city must withhold the information responsive to the first request, which we have marked, from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the alleged victim at issue was a child as defined by section 101.003 of the Family Code at the time of motor

vehicle accident at issue, the city must release the information responsive to the first request, which we have marked, to the first requestor.⁴

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 561325

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

⁴In this instance, we note the first requestor has a special right of access to the information being released pursuant to section 261.201(k) of the Family Code. See Fam. Code § 261.201(k). Accordingly, if the city receives another request for this information from a different requestor, the city should again seek a ruling from this office.