



Office of the Attorney General  
State of Texas

DAN M. VALES  
ATTORNEY GENERAL

February 10, 1998

Eugenia A. Cano  
Attorney  
Office of the City Attorney  
City of Alvin  
16 W. Sealy  
Alvin, Texas 77511

OR98-0408

Dear Ms. Cano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113630.

The City of Alvin Police Department (the "department") received a request for information concerning a specific investigation. You claim that the requested information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 exempts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code reads in part as follows:

(a) 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:

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<sup>1</sup>We note that the department did not request an open records decision from this office within the ten business days following the department's receipt of the open records request. Section 552.108 is a discretionary exception that a governmental body waives by its failure to timely request a decision from this office. *See, e.g.*, Open Records Decision Nos. 630(1994), 473 (1987). However, the confidentiality conferred on these records by section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code constitutes a "compelling" reason for non-disclosure that overcomes the legal presumption that the records are public information. *See* Gov't Code § 552.302; Open Records Decision No. 150 (1977).

(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 . . . chapter [261 of the Family Code] or in providing services as a result of an investigation.

We believe that the requested information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code.<sup>2</sup> You have not informed this office of any rules the department has adopted that would permit access to the requested records. We therefore conclude that the requested records are confidential pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. See Open Records Decision No. 440 (1986) at 2 (construing predecessor statute). Accordingly, the department must not release the requested records to the requestor.

Because section 552.101 is dispositive, we need not address your other claimed exception. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/ glg

Ref.: ID# 113630

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<sup>2</sup>We note that a parent of a victim of alleged child abuse or neglect may have a right to obtain from the Texas Department of Protective and Regulatory Services portions of the information concerning a report of alleged abuse or neglect. Fam. Code § 261.201(f).

Enclosures: Submitted documents

cc: Mr. Lester Curtis  
Licensed Claims Adjuster  
10122 Sagedale  
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(w/o enclosures)