OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 6, 1999

Ms. Sara Hartin
City Attorney
City of Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR99-3513

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131313.

The Copperas Cove Police Department (the "department") received a request for information relating to a specified case number. You claim that the requested information is excepted from disclosure under sections 552.108 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We find that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.[1]

Section 261.201 of the Family Code provides in relevant part:

> (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:
> (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

[1]Unlike other exceptions to required public disclosure under chapter 552 of the Government Code, this office will invoke section 552.101 on behalf of a governmental body that has not raised it. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

a result of an investigation.

We believe that the requested information consists of reports, records, and working papers used or developed in an investigation under chapter 261 of the Family Code. You have not informed this office of any rules adopted by the department that would permit access to the requested information. We therefore conclude that the requested information is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 (1986) (construing predecessor statute). Consequently, the department must not release any of the requested information.[2]

Inasmuch as section 552.101 of the Government Code is dispositive, we need not address your claims under sections 552.108 and 552.103. This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney.

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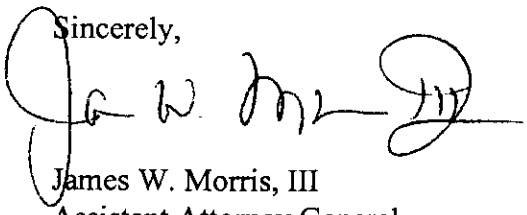
[2]We note that a parent or other legal representative of the victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

Id. § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



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

JWM/cwt

Ref: ID# 131313

Encl. Submitted documents

cc: Ms. Wendi R. Lester
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(w/o enclosures)