



September 6, 2001

Mr. Joe F. Grubbs  
District Attorney  
Ellis County  
1201 North Highway 77, Suite B  
Waxahachie, Texas 75165-5140

OR2001-3961

Dear Mr. Grubbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151611.

The Ellis County District Attorney (the "district attorney") and the Ellis County District Clerk (the "district clerk") each received a request to photograph the evidence as well as the "evidence file" related to the Jason Massey criminal case. You seek our opinion as to whether 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, and under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that as a general rule, the judiciary is exempt from the Public Information Act, *see* Gov't Code § 552.003(1)(B); Open Records Decision No. 25 (1974); Attorney General Opinion DM-166 (1992). Access to the records of the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules. Gov't Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Therefore, as you inform us that the submitted

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<sup>1</sup>We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

photos are from the unsealed court file in the capital murder case of Jason Massey, maintained by the district clerk, we conclude that these photographs are records of the judiciary. Thus, the district clerk is not required to release the requested photographic evidence under the Public Information Act.

With regard to the submitted information from the district attorney's file, we will address your arguments under section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses confidentiality provisions such as section 261.201(a) of the Family Code. Section 261.201(a) provides 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:

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the submitted documents from the district attorney's file relate to the investigation of a case of child abuse,<sup>2</sup> the documents are within the scope of section 261.201 of the Family Code. You have not indicated that the district attorney has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude that the submitted documents from the district attorney's file are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Further, we do not believe that section 261.201 is intended solely to protect the privacy interests of the subject children. Therefore, we do not believe that the fact that the subject children are now deceased takes the information at issue outside the ambit of section 261.201. Accordingly, the district attorney must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law. As we resolve your request pertaining to this information under section 552.101, we need not address your argument under section 552.108.

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<sup>2</sup>Section 261.001 of the Family Code defines "abuse" to include "physical injury that results in substantial harm to the child . . ." Fam. Code § 261.001(1)(C).

To summarize, the requested photographs are records of the judiciary, and therefore, the district clerk is not required to release the requested photographs under the Public Information Act. The requested information from the district attorney's file is confidential under section 261.201 of the Family Code, and must therefore be withheld under section 552.101 of the Government Code.

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. *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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 151611

Enc. Submitted documents

c: Ms. Kelly Ann Martin  
Medstar Television  
5920 Hamilton Boulevard  
Allentown, Pennsylvania 18106  
(w/o enclosures)