



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

August 12, 2003

Mr. James Nolan  
Senior Attorney  
Texas Department of Protective and Regulatory Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2003-5590

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185897.

The Texas Department of Protective and Regulatory Services (the “department”) received a request for information concerning the investigation of an accident involving a certain child. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not sought an open records decision from this office within the ten business day time period prescribed by section 552.301 of the Government Code. *See* Gov’t Code § 552.301(a), (b). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ’g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest exists when some other source of law makes the information confidential or when third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As

the presumption of openness can be overcome by a showing that information is confidential by law, we will consider your arguments under section 552.101.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. You raise section 261.201(a) of the Family Code, which 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, 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 state, and the documents reflect, that the submitted information was created and maintained as part of a department investigation of abuse or neglect.<sup>1</sup> *See id.* §§ 261.001 , .101-.105, .301. We therefore find that the requested information is within the scope of section 261.201(a) of the Family Code.<sup>2</sup> *See id.* § 261.201(a). You inform us that the department adopted rules to implement section 261.201. *See* 40 T.A.C. §§ 700.201-.207. These rules permit the department to disclose confidential information about child abuse and neglect investigations carried out under section 261.301(a) of the Family Code to certain individuals in certain circumstances. *See id.* § 700.201; *see also* Fam. Code §§ 261.001 (1)(a), (4) (defining “abuse” and “neglect”), .301(a) (requiring prompt and thorough investigation of report of child abuse or neglect). You state that these rules do not allow the department to release the information to this requestor. Consequently, as the department’s rules do not permit the release in this instance, we find that the submitted information is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must withhold the submitted

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<sup>1</sup>Section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. *See* Fam. Code § 261.201(h).

<sup>2</sup>For a situation in which a request for confidential information is not made under the Public Information Act, section 261.201 permits a court to order the disclosure of confidential information in certain circumstances. *See* Fam. Code § 261.201(b), (c).

information from disclosure in its entirety under section 552.101 of the Government Code as information made confidential by law.

You also request that this office issue a previous determination allowing the department to withhold under section 552.101 abuse and neglect investigation records and service delivery records resulting from such investigations. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that unless the department's rules permit the department to release requested records to a particular requestor, the records concerning an investigation of an allegation of abuse or neglect of a child and the records used or developed in providing services as a result of such an investigation are confidential under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Gov't Code § 552.301(a), (f); see also Open Records Decision No. 673 (2001)*. Thus, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information requested of the department under chapter 552 of the Government Code. *See Gov't Code § 552.301(a), (f); see also Open Records Decision No. 673 (2001)*.

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,

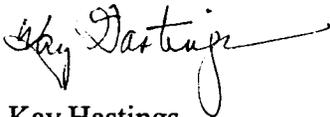
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 185897

Enc: Submitted documents

c: Mr. Joe Vargas  
South Texas Claims Service, Inc.  
P.O. Box 270276  
Corpus Christi, Texas 78427  
(w/o enclosures)