



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 24, 2003

Ms. Moira Parro
Assistant District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2003-6720

Dear Ms. Parro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188256.

The County of Dallas (the "county") received a request for any documents created during the investigation of an incident at a Dallas County Juvenile Detention Center, and any information regarding medical examination or treatment of a named individual. You argue that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code §552.304 (providing for submission of public comments).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. Chapter 261 of the Family Code governs investigations of child abuse and neglect. Section 261.201 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 a result of an investigation.

Fam. Code § 261.201(a); *see also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). We find that some of the submitted information consists of files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 of the Family Code. *See* Fam. Code §§ 261.103(a)(3)-(4) (suspected child abuse or neglect shall be reported to state agency that operates, licenses, certifies, or registers facility in which alleged abuse or neglect occurred or to agency designated by court to be responsible for protection of children), .301(a)-(b) (designated agency or responsible state agency shall investigate report of abuse or neglect), .405 (alleged abuse or neglect in juvenile justice program or facility shall be reported to and investigated by Texas Juvenile Probation Commission). You do not inform this office that the county has a rule that governs the release of this type of information, and we thus presume that no such rule exists. *See also* 37 T.A.C. § 349.503 (governing access to confidential information maintained by Texas Juvenile Probation Commission).¹ Accordingly, we conclude that portions of the submitted information are confidential under section 261.201 of the Family Code. The county must withhold the marked information under section 552.101 of the Government Code.

Next, we address your section 552.103 claim for the information that is not confidential under section 261.201 of the Family Code. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

¹ We note, however, that the child's parent(s) may have a special right of access to TJPC records relating to this alleged abuse. *See* 37 T.A.C. § 349.503(b).

The county has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The county must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). The county submits a letter from opposing counsel to the county alleging, among other things, civil rights violations to show that the county reasonably anticipates litigation. We find, therefore, that the county has shown that litigation was reasonably anticipated at the time it received the information request. We also find that the information at issue is related to the anticipated litigation. We have marked the information excepted under section 552.103 of the Government Code.

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the reasonably anticipated litigation is not excepted from disclosure under section 552.103(a) and may not be withheld from disclosure on that basis.² Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575(1982); Open Records Decision No. 350 (1982).

In summary, the county must withhold information used or developed in a child abuse investigation under section 552.101. The county may withhold the remaining marked information under section 552.103.³

² We note that some of the information excepted under section 552.103 may be confidential by law and must not be released even after litigation has concluded. If you receive a subsequent request for the information, you should reassert your arguments against disclosure at that time. Gov’t Code § 552.352 (distribution of confidential information is criminal offense).

³ Because we are able to resolve this matter under section 261.201 of the Family Code and section 552.103 of the Government Code, we need not address your additional arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "Heather R. Rutland". The signature is fluid and cursive, with a large initial "H" and a long, sweeping underline.

Heather R. Rutland
Assistant Attorney General
Open Records Division

HRR/sdk

Ref: ID# 188256

Enc: Submitted documents

c: Mr. Daniel P. Clark
2200 North Lamar, Suite 202
Dallas, Texas 75202
(w/o enclosures)