



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2004

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

OR2004-0725

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195728.

The Fort Bend County District Attorney (the "D.A.") received three requests for information pertaining to charges involving a child for the year 2003. The D.A. asserts the information is exempted from public 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 the requestor's comments. Gov't Code § 552.304.

First, the requestor argues the D.A. failed to timely seek a request from this office to withhold information responsive to his December 3, 2003 request. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). The first request, received by the D.A. on November 4, 2003, was for certain information pertaining to indictments for offenses involving a child for the year 2003. The second request, received by the D.A. on November 7, 2003, was for similar information pertaining to indictments for the offenses of sexual assault of a child for the years 2002 and 2003. The ten business day deadlines for the two requests are November 19 and 21, respectively. The D.A.'s request for a decision to withhold the information for both open records requests was postmarked November 19, 2003. Thus, it was timely submitted. *See* Gov't Code § 552.308 (timeliness is met if there is a post office cancellation mark indicating a time within the required period). The third request, dated December 3, 2003, was for the same categories of information pertaining to indictments for the offenses of injury to a child, driving while intoxicated with a child on board, and all other charges which involve a child for the year 2003. The third request seeks the same information as the first two requests. Thus, the D.A. need not submit a request for a decision as to the third request to withhold the same information because the D.A. complied with section 552.301 when it sought a decision for the first two requests.

Next, the D.A. contends the requestor is seeking lists of various information, and no such lists exists. The Public Information Act does not require a governmental body to obtain information not in its possession, Open Records Decision Nos. 558 (1990), 518 (1989), 499 (1988), or to take affirmative steps to create or obtain information that is not in its possession, Open Records Decision No. 534 (1989). Secondly, the D.A. contends the requestor is asking the D.A. to perform legal research, which the D.A. is not obligated to do. In Open Records Decision No. 563, the requestor sought documents showing the authority of a non-profit corporation to engage in various activities. We ruled as follows:

While couched as requests for documents, these are essentially requests for federal and state laws and regulations governing the activities of the corporation and for a statement of the corporation's interpretation of these provisions. The Open Records Act does not require a governmental body to perform legal research for a requestor nor to answer general questions.

Open Records Decision No. 563 at 8 (1990). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). Here, the requestor neither asks the D.A. for lists or to perform legal research. The requestor seeks documents pertaining to certain offenses that contain the names and ages of certain indicted persons, the types and dates of certain offenses, the arrest dates, and the arresting agency. The D.A. holds records from which the requested information can be obtained. Accordingly, we will consider whether the information is excepted from public disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code 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.

Fam. Code § 261.201(a). Because the requested information is used or developed in an investigation of child abuse, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the D.A. has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the requested information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the D.A. must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law. Because section 261.201 is dispositive, we do not address the D.A.'s other arguments.

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 of 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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 195728

Enc. Submitted documents

c: Mr. Gary W. Gates, Jr.  
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Rosenberg, Texas 77471  
(w/o enclosures)