ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2004

Ms. Patricia J. Acosta
Assistant District Attorney
El Paso County Courthouse
500 East San Antonio, 2nd Floor
El Paso, Texas 79901-2420

OR2004-3860

Dear Ms. Acosta:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201297.

The District Attorney for the Thirty-fourth Judicial District (the "district attorney") received a request for information relating to a specified cause number, to include all files, records, and other documents pertaining to the arrest, investigation, and trial. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.[1] We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 of the Family Code provides in 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]As you also raise section 552.103, but have submitted no arguments in support of this exception, you have waived section 552.103. *See* Gov't Code §§ 552.006, .007, 301(e)(1)(A), .302.

> (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 the requested information consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code or in providing services as a result of an investigation. You do not inform this office of any rule adopted by the district attorney that would allow the release of the requested information in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the requested information is excepted from public disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law. As we are able to make this determination, we need not address your other arguments under sections 552.101, 552.108, and 552.130.

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

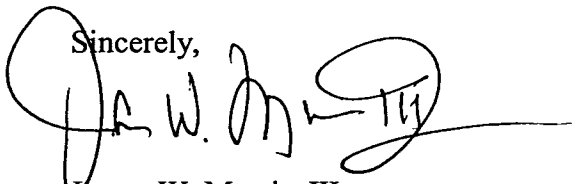
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



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

JWM/sdk

Ref: ID# 201297

Enc: Submitted documents

c: Mr. James D. Lucas
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El Paso, Texas 79901
(w/o enclosures)