



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2005

Ms. M. Ann Montgomery  
Assistant County and District Attorney  
Ellis County  
1201 North Highway 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2005-11009

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 237738.

The Ellis County Sheriff's Office (the "sheriff") received a request for information relating to a specified arrest. You have submitted information that you claim is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We initially note that some of the submitted information does not appear to be responsive to this request. In this instance, the requestor seeks access to information contained in offense reports and any separate arrest or book-in report. To the extent that the submitted information is not contained in those types of documents, it is not responsive to the request. This decision does not address the public availability of the submitted information that is not responsive to the request, and the sheriff need not release that information.

Next, we address section 552.101 of the Government Code. Section 552.101 excepts from 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. You raise section 552.101 in conjunction with section 261.201 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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the submitted information that is responsive to this request consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. Thus, the responsive information falls within the scope of section 261.201(a). You do not indicate that the sheriff has adopted a rule that governs the release of this type of information. We therefore assume that no such rule exists. Given that assumption, we conclude that the sheriff must withhold all of the responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.<sup>1</sup> See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). Furthermore, because section 261.201(a) protects all “files, reports, records, communications, and working papers” that are related to an investigation of child abuse or neglect, the sheriff must not release front page offense or arrest report information in such cases.

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).

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<sup>1</sup>As we are able to make this determination, we do not address your other arguments against disclosure.

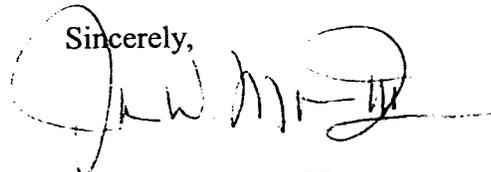
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



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

JWM/sdk

Ref: ID# 237738

Enc: Submitted documents

c: Mr. Michael W. Hartley  
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(w/o enclosures)