



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2008

Ms. Lauren E. Melhart
Assistant District Attorney
Henderson County
109 West Corsicana Street, Suite 103
Athens, Texas 75751

OR2008-02995

Dear Ms. Melhart:

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# 304022.

The Henderson County District Attorney's Office (the "district attorney") received a request for all information pertaining to a specified case. We understand you to claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your comment that some of the language in the written request for information is unclear. Specifically, you state that you are unclear as to what the request for incidents and court hearings means.¹ A governmental body is required to make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). Based on our review, we find that the district attorney has made a good-faith effort to relate the request to information that the district

¹We note that the Act permits a governmental body to seek clarification from a requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 at 5 (1999) (providing that time periods proscribed by section 552.301 are tolled during the clarification process).

attorney maintains. Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by statute, such as section 261.201(a) 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 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). The submitted information relates to an investigation of the alleged sexual assault of a child. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011). Upon review, we find that this information falls within the scope of section 261.201. However, the requestor in this instance is a Texas Department of Family and Protective Services (the “DFPS”) employee. Therefore, the confidentiality of section 261.201 does not apply. *See id.* § 261.105(a) (local or state law enforcement agency must refer chapter 261 reports to the DFPS). The district attorney must therefore release the requested information to the requestor.² As our ruling is dispositive, we need not address your claimed exception to 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 file suit in

²Because the requestor has a right of access to information that otherwise would be excepted from release under the Act, the district attorney must again seek a decision from this office if it receives a request for this information from a different requestor.

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, 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 challenge 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,



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 304022

Enc. Submitted documents

c: Ms. Gloria Clifford
115 South Murchison
Athens, Texas 75751
(w/o enclosures)