



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2009

Mr. R.T. Beck
Limestone County Chief Deputy
Limestone County Sheriff's Department
1221 East Yeagua Street
Groesbeck, Texas 76642

OR2009-10009

Dear Mr. Beck:

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# 349528.

The Limestone County Sheriff's Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the requestor's assertion that the department did not comply with section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The requestor asserts that he sent a request to the department on March 31, 2009, to which the department did not respond. However, you state that the department never received this request. Rather, the department states that it only received the present request from the requestor on May 11, 2009. The determination of whether or not the department received the previous request for information is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Accordingly, we must presume that the department did not receive a request from the

requestor until May 11, 2009. Therefore, we conclude the department complied with the procedural requirements of section 552.301(b).

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 that is made confidential by other statutes. 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, 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). The submitted report pertains to 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). Because the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the submitted report is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the submitted incident report is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

¹We note that the requestor, as attorney representing the parent of a child who is the subject of reported abuse, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules: shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if DFPS has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. Fam. Code § 261.201(g).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#349528

Enc. Submitted documents

c: Requestor
(w/o enclosures)