



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2009

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

OR2009-14355

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# 358327.

The Ellis County Sheriff's Department (the "sheriff") received a request for information pertaining to an incident involving two named individuals. You claim 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.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

- (a) Except as provided by Section 261.203, 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, audiotapes, videotapes, 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.

Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1, sec. 261.201, 1995 Tex. Gen. Laws 113, 262, *amended by* Act of June 1, 2009, 81st Leg., R.S., ch. 779, §1, 2009 Tex. Sess. Law Serv. 1965, 1965–66 (Vernon) (to be codified as an amendment to Fam. Code § 261.201(a)); *see* Fam. Code § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). You contend the submitted information is confidential under section 261.201(a). We note, however, the submitted information is related to an alleged assault, the victim of which was an adult. You have not demonstrated the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. We therefore conclude the submitted information is not confidential under section 261.201(a) of the Family Code and may not be withheld on that basis under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

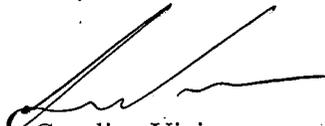
Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A). You state the submitted information relates to a case which concluded with a result other than conviction or deferred adjudication. Based on your representation and our review, we conclude the sheriff may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The remaining information must be released.

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.

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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 358327

Enc. Submitted documents

c: Requestor
(w/o enclosures)