



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2010

Ms. Rosario R. Morales  
La Salle County Sheriff's Office  
101 Courthouse Square  
Cotulla, Texas 78014

OR2010-02657

Dear Ms. Morales:

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# 371189.

The La Salle County Sheriff's Office (the "sheriff") received two requests for records and communications sent to the Texas Department of Family and Protective Services pertaining to several named individuals. We understand you to claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). The sheriff received the request for information on October 20, 2009.

However, you did not request a ruling from this office until December 11, 2009, and you did not submit the responsive information until January 27, 2010. Accordingly, we conclude the sheriff failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Section 552.101 can provide a compelling reason to overcome this presumption. Therefore, we will address the applicability of section 552.101 to the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential

under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You state the submitted documents relate to an investigation of alleged or suspected child neglect conducted by the sheriff. *See id.* §§ 261.001 (defining “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Upon review, we agree the submitted information is subject to chapter 261 of the Family Code. We note each requestor is a parent of a child victim listed in the information. Information may not be withheld on the basis of section 261.201(a) from a parent of a child who is the subject of alleged abuse or neglect, unless the parent is alleged to have committed the abuse or neglect. *See id.* § 261.201(k). In this instance, the information at issue reflects each parent requestor is alleged to have committed the neglect. Therefore, the submitted information falls within the scope of section 261.201(a), and the parent requestors do not have a right of access under section 261.201(k). You do not indicate the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jb

Ms. Rosario R. Morales - Page 4

Ref: ID# 371189

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

c: Ms. MARISOL CRUZ  
804 JOHNSTON  
COTULLA TX 78014

Ms. BELINDA RODRIGUEZ  
MR. LIONEL R MARTINEZ  
PO BOX 184  
COTULLA TX 78014