



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2010

Ms. Luz E. Sandoval Walker  
Assistant City Attorney  
El Paso City Prosecutor's Office  
810 East Overland Avenue  
El Paso, Texas 79901-2516

OR2010-11284

Dear Ms. Walker:

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# 387974 (No. 2010-05-39-AG).

The El Paso Police Department (the "department") received a request for information relating to a specified arrest. You claim that the requested 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 information you submitted.

We note that some of the submitted information was created after the department received the instant request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive information.<sup>1</sup> Thus, the information we have marked that was created after the department received the instant request is not responsive to the request. This decision does not address the public availability of that 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) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent

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<sup>1</sup>See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

with this code and applicable federal or state law or under rules adopted by an investigating agency:

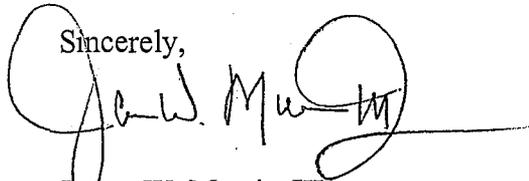
- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You contend that the submitted information is confidential under section 261.201. We find that the information in question was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of Fam. Code ch. 261). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

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,



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

JWM/em

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<sup>2</sup>As we are able to make this determination, we do not address the other exception you claim.

Ref: ID# 387974

Enc: Submitted information

c: Requestor  
(w/o enclosures)