



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2010

Mr. David M. Swope  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002-1700

OR2010-11336

Dear Mr. Swope:

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# 388388 (C.A. File No. 10GEN1013).

The Harris County Sheriff's Office (the "sheriff") received five requests for a police report and any cellular telephone video pertaining to a specified incident. You state that as of the date the sheriff received the requests for information, the sheriff did not have any information responsive to the portion of the requests seeking a cellular telephone video.<sup>1</sup> You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information was created after some or all of the requests were received. The Act does not require a governmental body to release information that did not exist when it received a request for information. Thus, the submitted information that did not exist when the sheriff received the requests is not responsive to the requests. *See Econ. Opportunities Dev. Corp.*, 562 S.W.2d at 268; Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at the time

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990).

request was received). Accordingly, we do not address the availability of this non-responsive information, and the sheriff need not release it in response to these requests.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information that other statutes make confidential, including 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 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.

Fam. Code § 261.201(a). Upon review, we find that the submitted information was used or developed in an investigation into alleged child abuse under chapter 261. *See* Fam. Code § 261.001(1) (defining "abuse" for purposes of Family Code ch. 261); *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). As there is no indication that the sheriff 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 sheriff 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>3</sup>

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.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>As our ruling is dispositive, we need not address your argument against disclosure.

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\\_ori.php](http://www.oag.state.tx.us/open/index_ori.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,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 388388

Enc. Submitted documents

c: 5 Requestors  
(w/o enclosures)