



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Ms. Deborah F. Harrison
Assistant District Attorney
Special Crimes Division - Civil Section
Collin County District Attorney's Office
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2010-15540

Dear Ms. Harrison:

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# 396513.

The Collin County District Attorney's Office (the "district attorney") received a request for the district attorney's file on a named individual related to a specified cause number. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.111, 552.132, 552.1325, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state one of the submitted videotapes was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-03959 (2010). In that ruling, we held the district attorney must withhold the submitted videotape under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district attorney must continue to rely on that ruling as a previous determination and withhold the videotape at issue in Open Records Letter No. 2010-03959 in accordance with that ruling.¹ See Open Records Decision No. 673 (2001)

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

(so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You raise section 552.101 of the Government Code for the remaining documents at issue. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides 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.

Fam. Code § 261.201(a). You state the submitted file pertains to the district attorney’s criminal prosecution of an individual for aggravated sexual assault of a child. Thus, this information pertains to an investigation of child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of Family Code chapter 261 includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.021(b)(1) (defining “child” for purposes of Penal Code section 22.021). Thus, the remaining information at issue is within the scope of section 261.201. You do not indicate the district attorney has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the remaining information at issue is confidential pursuant to section 261.201 of the Family Code, and the district attorney must withhold it in its entirety under section 552.101 of the Government Code.² *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, the district attorney must withhold the videotape responsive to the request for information at issue in Open Records Letter No. 2010-03959 in accordance with that ruling. The district attorney must withhold the remaining submitted information 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, 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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 396513

Enc. Submitted documents

c: Requestor
(w/o enclosures)