



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2010

Ms. Monica Garcia
Public Information Officer
District Attorney for the 49th Judicial District
P.O. Box 1343
Laredo, Texas 78042

OR2010-16594

Dear Ms. Garcia:

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# 399166.

The District Attorney for the 49th Judicial District (the "district attorney") received a request for information relating to investigations involving the requestor and another named individual. You have submitted information the district attorney seeks to withhold under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We also have considered the comments we received from the requestor.¹

You also represent to this office that the district attorney is not in possession of any information responsive to portions of this request. With specific regard to the investigation of the requestor to which the request refers, you state that the district attorney neither participated in nor has any records of such an investigation. We note that a governmental body must make a good-faith effort to relate a request to responsive information that is within the governmental body's possession or control.² A governmental body is not required, however, to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by or on behalf of the

¹See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

²See Open Records Decision No. 561 at 8-9 (1990).

governmental body that received the request.³ Thus, in responding to the instant request, you need not release any information that is not held by the district attorney or on his behalf.

Next, we consider the requestor's assertion that the district attorney did not timely respond to his request for information. You state, however, that you were unaware of the request until you were notified that the requestor had filed a complaint with this office. We note that when a governmental body asks this office to determine whether requested information is exempted from public disclosure, it must comply with the deadlines prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(a). If the governmental body fails to do so, the requested information is presumed to be public and must be released unless there is a compelling reason to withhold any of the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The district attorney's request for this decision presents issues with regard to his compliance with section 552.301. In this instance, however, the district attorney's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302. Therefore, we need not decide whether the district attorney complied with section 552.301 in requesting this decision and will determine whether section 552.101 is applicable in this instance.

Section 552.101 of the Government Code exempts 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 other statutes make confidential. Section 261.201 of the Family Code 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

³*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), 534 at 2-3 (1989), 518 at 3 (1989), 476 at 1 (1987), 452 at 3 (1986), 362 at 2 (1983).

[chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code or in providing services as a result of an investigation. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of Fam. Code ch. 261). As such, the submitted information falls within the scope of section 261.201(a)(2). As you do not indicate that the district attorney 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 district attorney must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ *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, 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

Ref: ID# 399166

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁴As we are able to make this determination, we need not address your arguments under section 552.101.