



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2011

Mr. J. Macklin Milligan
Assistant District Attorney
Harris County District Attorney's Office
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2011-15617

Dear Mr. Milligan:

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# 435102.

The Harris County District Attorney (the "district attorney") received a request for "the records associated with the complaint from parents with affected children that attended A.G. Hillard during the 2009-2010 school year in the first grade classes of [three named individuals] or other implicated teachers in this case." You claim some of the requested information is not subject to the Act. You also claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You inform us some of the submitted information consists of records of a grand jury. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 411 (1984), 398 (1983). *But see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). Thus, the submitted information that is held by the district attorney as agent of the grand jury consists of records of the judiciary not subject to disclosure under the Act and

the district attorney is not required to release such information in response to the request for information.¹

You assert the remaining information is excepted from disclosure under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes, including section 261.201 of the Family Code. Section 261.201(a) provides as follows:

[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 assert the remaining information was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find the remaining information is within the scope of section 261.201 of the Family Code. You do not indicate the district attorney has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the remaining requested documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district attorney must withhold these documents from disclosure under section 552.101 of the Government Code as information made confidential by law.²

To conclude, the submitted information that is held by the district attorney as agent of the grand jury consists of records of the judiciary not subject to disclosure under the Act and the district attorney is not required to release such information in response to the request for

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

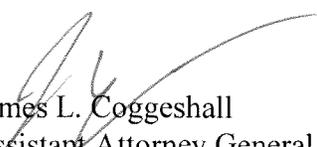
²As our ruling is dispositive, we do not address your other argument to withhold this information.

information. The district attorney must withhold the remaining 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 325102

Enc. Submitted documents

c: Requestor
(w/o enclosures)