



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2011

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-17662

Dear Ms. Evans:

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# 437535 (GC No. 18958).

The Houston Police Department (the “department”) received a request for a “transcript for DNA” and other information related to specified DNA testing. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the information you submitted.

We first note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(a)-(b), (e) (prescribing deadlines for governmental body’s request for attorney general’s decision). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because

¹As you also raise sections 552.130 and 552.147 of the Government Code, but have provided no arguments in support of your assertion of those exceptions, this decision does not address sections 552.130 and 552.147. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must provide written comments demonstrating applicability of claimed exceptions to disclosure).

your claims under section 552.101 of the Government Code can provide compelling reasons for non-disclosure, we will consider your arguments under this exception.

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

Fam. Code § 261.201(a). You contend the submitted information is confidential under section 261.201. You indicate, and have provided documentation reflecting, the information at issue 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). *See id.* §§ 261.001(1)(E) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of sexual assault under Penal Code § 22.011); Penal Code § 22.011(c) (defining “child”). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

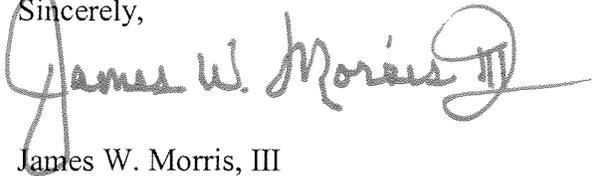
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²As we are able to make this determination, we need not address your other claim under section 552.101.

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 cursive script that reads "James W. Morris, III". The signature is written in dark ink and includes a stylized flourish at the end.

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

JWM/em

Ref: ID# 437535

Enc: Submitted documents

c: Requestor
(w/o enclosures)