



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2012

Mr. Troy D. Walker  
Assistant District Attorney  
220th Judicial District  
P.O. Box 368  
Meridian, Texas 76665

OR2012-01704

Dear Mr. Walker:

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# 446424.

You inform us the District Attorney for the 220th Judicial District (the "district attorney") received a request for "all investigative and/or arrest reports . . . pertaining to" a named individual or the requestor's client.<sup>1</sup> Based on your arguments, we understand you to claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district attorney's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), within ten business days of receiving the written request a governmental body must submit to this office a copy of the written request for information and a signed statement as to the date on which the written request for information was received by the governmental body, or evidence sufficient to establish that date. Gov't Code § 552.301(e)(1)(B), (C). However, as of the date of this ruling, you have not submitted to this office a copy of the written request for information or a signed statement as to the date on which the district attorney received the written request for

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<sup>1</sup>As you did not submit a copy of the request for information, we take our description from your brief.

information or evidence sufficient to establish that date. Thus, the district attorney failed to comply with the procedural requirements mandated by section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold 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); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the district attorney's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the district attorney may not withhold any of the submitted information under section 552.108. However, section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Therefore, we will consider whether this section requires you to withhold the submitted information.

Section 552.101 of the Government Code 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. Section 261.201 of the Family Code provides in relevant part 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find the submitted information is within the scope of section 261.201(a). Although you inform us the requestor represents a parent of the child victim listed in the submitted report, the report also reflects this parent was suspected of committing the alleged or suspected abuse. Therefore, we determine the requestor does not have a right of access to this report under section 261.201(k). *See id.* § 261.201(k). Accordingly, we conclude the district attorney must withhold the submitted information under section 552.101 in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (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](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# 446424

Enc. Submitted documents

c: Requestor  
(w/o enclosures)