



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2012

Ms. Christina Alvarado
Assistant District Attorney
Frank Crowley Courts Bldg.
133 North Riverfront Blvd, LB-19
Dallas, Texas 75207-4399

OR2012-08188

Dear Ms. Alvarado:

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# 454894.

The Dallas County District Attorney's Office (the "district attorney") received a request for all prosecution files pertaining to a named individual, including six specified cases. You claim the requested information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information consists of completed investigations subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by section 552.108." Gov't Code § 552.022(a)(1). Pursuant to section 552.022(a)(1), a completed investigation is expressly public unless it is either excepted under section 552.108 of the Government Code or is made confidential under the Act or other law. Although you seek to withhold the completed investigations as attorney work product under section 552.111 of the Government Code,

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.111 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, section 552.111 does not make information confidential for purposes of section 552.022(a)(1). Therefore, the district attorney may not withhold any of the completed investigations under section 552.111 of the Government Code. We note the attorney work product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure, which have been held to be "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Those rules are only applicable, however, to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, rule 192.5 is not applicable to the completed criminal investigations. Therefore, the district attorney may not withhold any of the completed investigations on the basis of Texas Rule of Civil Procedure 192.5. Because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your claim for the completed investigations under section 552.108. We note the completed investigations are also subject to section 552.101 of the Government Code.² Because section 552.101 makes information confidential under the Act, we will address the applicability of that section to the completed investigations.

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. Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides:

(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). Because the requested information pertains to investigations of alleged or suspected child abuse, the information is within the scope of section 261.201 of

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with a child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), .021(b)(1). As we have no indication the district attorney has adopted a rule that governs the release of this type of information, we assume no such rule exists. Therefore, we conclude the requested information is confidential under section 261.201 of the Family Code and the district attorney must withhold it under section 552.101 of the Government Code.³ *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, 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 454894

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your argument against disclosure.