



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2012

Ms. M. Ann Montgomery-Moran
Assistant Ellis County & District Attorney
Ellis County Courts Building
109 South Jackson
Waxahachie, Texas 75165

OR2012-08607

Dear Ms. Montgomery-Moran:

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# 455465.

The Ellis County Sheriff's Office (the "sheriff") received a request for police reports, copies of a recorded confession, and the corresponding transcript pertaining to a specified criminal case. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the sheriff's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must ask for a decision from this office and state the exceptions to disclosure that apply within ten business days of receiving a request. *See* Gov't Code § 552.301(b). In this instance, you have provided two different dates as being the date the sheriff received the instant request for information. The request itself is not dated or date-stamped. Accordingly, because of your conflicting representations, we are unable to determine whether the sheriff requested a ruling from this office within ten business days of receiving the request for information. We therefore find the sheriff has failed to establish that it complied with the requirements of section 552.301(b) in requesting a ruling from this office.

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 information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 at 2 (1977). You raise section 552.101 as an exception to disclosure. As section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to 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.” Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant 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 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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261), *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261.201). Accordingly, we conclude this information is subject to section 261.201 of the Family Code. Pursuant to section 261.201(k), an investigating entity generally may not withhold records subject to section 261.201 from a parent who is not suspected of committing the abuse. *See* Fam. Code § 261.201(k). Although the requestor is the parent of the child victim listed in the submitted information and is not alleged to have committed the abuse at issue, the child victim is now at least eighteen-years-old. Thus, we find the requestor no longer has a right of access to her adult child’s records under section 261.201(k). *See id.* As you have not indicated whether the sheriff has adopted any rules that govern the release of this type of information, we assume no such rules exist. Therefore, we find the submitted information is confidential pursuant to section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/eb

Ref: ID# 455465

Enc. Submitted documents

c: Requestor
(w/o enclosures)