



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 27, 2012

Mr. Bill Delmore  
Assistant District Attorney  
Montgomery County  
207 West Phillips, Second Floor  
Conroe, Texas 77301

OR2012-09910

Dear Mr. Delmore:

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# 455939.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for a specified video recording. You claim 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.

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 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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 [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.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). We find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code.<sup>1</sup> *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). However, the requestor is a parent of the child victim and is not alleged to have committed the suspected abuse. Accordingly, the submitted information may not be withheld from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your argument under section 552.101 of the Government Code.

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<sup>1</sup>We note you also raise section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code. However, we note section 264.408 of the Family Code provides “information related to the investigation of a report of abuse or neglect under [c]hapter 261 and services provided as a result of the investigation is confidential as provided by [s]ection 261.201 [of the Family Code].” *See* Fam. Code § 264.408(b). Accordingly, as the submitted information is subject to section 261.201, we need not address your argument under section 264.408 of the Family Code.

You raise section 552.101 of the Government Code in conjunction with article 38.45 of the Code of Criminal Procedure, which provides, in relevant part:

(a) During the course of a criminal hearing or proceeding, the court may not make available or allow to be made available for copying or dissemination to the public property or material:

(1) that constitutes child pornography, as described by Section 43.26(a)(1), Penal Code;

(2) the promotion or possession of which is prohibited under Section 43.261, Penal Code; or

(3) that is described by Section 2 or 5, Article 38.071, of this code.

(b) The court shall place property or material described by Subsection (a) under seal of the court on conclusion of the criminal hearing or proceeding.

Crim. Proc. Code art. 38.45(a), (b). Accordingly, article 38.45 sets forth restrictions placed on a court with regard to the dissemination of evidence in a criminal hearing or proceeding. We note the submitted information in this instance consists of a video recording that was submitted to the district attorney's office by the New Caney Independent School District Police Department (the "department") pursuant to the chapter 261 investigation conducted by both the district attorney's office and the department. The district attorney's office received the present request for information and maintains the requested video recording. The restrictions on a court's release of information under article 38.45 do not apply to the district attorney's office's release of information requested under the Act. Therefore, we find article 38.45 is not applicable to the submitted information, and no portion of the information may be withheld on this basis. As no further exceptions are raised, the submitted video recording must be released to this requestor.<sup>2</sup>

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),

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<sup>2</sup>We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the district attorney's office receives another request for this information from a different requestor, the district attorney's office must again seek a ruling from this office.

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 black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 455939

Enc. Submitted documents

c: Requestor  
(w/o enclosures)