



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

July 3, 2012

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

OR2012-10253

Dear Ms. 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# 457834.

The Ellis County District Attorney's Office (the "district attorney's office") and the Ennis Police Department (the "department"), which is represented by the district attorney's office, received a request for information related to a specified criminal case. You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note, and you acknowledge, the district attorney's office did not comply with the ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision with respect to the request for information received by the department. *See* Gov't Code § 552.301(b). 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, 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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the district

attorney's office's claims under section 552.101 of the Government Code can provide compelling reasons for non-disclosure under section 552.302, we will address your arguments under that exception for the request for information received by the department. We will also consider the district attorney's office's arguments for the request for information it received.

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. Section 261.201(a) of the Family Code provides as follows:

[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). Upon review, we find the submitted information was used or developed during a child abuse investigation conducted by the department. *See id.* § 261.001(1) (defining "abuse" for purposes of section 261.201); *see also* Penal Code § 22.04 (defining "child" for purposes of injury to a child as a person 14 years of age or younger). Based on your representations and our review, we find the submitted information is within the scope of section 261.201(a). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the district attorney's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> *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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Jennifer Burnett". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 457834

Enc. Submitted documents

c: Requestor  
(w/o enclosures)