



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

July 12, 2012

Mr. Robert N. Bland, IV  
District Attorney  
Ector County  
300 North Grant, Room 305  
Odessa, Texas 79761

OR2012-10836

Dear Mr. Bland:

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# 458612.

The Ector County District Attorney's Office (the "district attorney's office") received a request for the district attorney's file pertaining to a named individual and two requests for the district attorney's file pertaining to another named individual. You claim the submitted 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, you state some of the requested information was the subject of a previous ruling by this office. In Open Records Letter No. 2011-14825 (2011), this office ruled that the district attorney's office must withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district attorney's office must continue to rely on the prior ruling as a previous determination and withhold the requested information we previously ruled on in accordance with Open Records Letter No. 2011-14825. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is

addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, because some of the submitted information is not encompassed by the previous decision, we will address your arguments.

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 protected by other statutes, including section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information was used in a child abuse investigation. Thus, we find the information at issue falls within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). As you do not indicate the district attorney’s office has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, we conclude the information at issue, which we have marked, is confidential and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You contend the remaining information at issue reflects the mental impressions and legal reasoning of the district attorney's office. You state this information was created in anticipation of or in the course of preparing for criminal litigation. Upon review, we find the remaining information at issue was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Thus, section 552.108(a)(4) of the Government Code is applicable to the remaining information at issue.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to basic "front-page" information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district attorney's office may withhold the remaining information at issue under section 552.108(a)(4) of the Government Code.<sup>1</sup>

In summary, the district attorney's office must continue to rely on Open Records Letter No. 2011-14825 as a previous determination and withhold the requested information we previously ruled on in accordance with the prior ruling. The district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the district attorney's office may withhold the remaining information at issue under section 552.108(a)(4) of the Government Code.

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 argument against disclosure of this information.

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 black ink, appearing to read 'Nneka Kanu', with a large loop at the end.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 458612

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)