



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2012

Mr. Douglas E. Manning
Assistant County Attorney
Orange County
801 Division
Orange, Texas 77630

OR2012-11398

Dear Mr. Manning:

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# 459555.

The Orange County Sheriff's Office (the "sheriff's office") received a request for information pertaining to three specified incident reports involving three named individuals and any reports or statements made by one of the named individuals to a named detective prior to a specified date. You assert the sheriff's office need not comply with the request pursuant to section 552.028 of the Government Code, and, alternatively, the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code provides, in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You state the requestor is an agent of the prison legal aid association. You claim the requestor is making the present request for public information as a representative of a specified inmate and the information requested is "nearly identical to that information previously requested by [the inmate] on multiple occasions." You state the requestor has not identified himself as the attorney for an incarcerated individual. Having considered your arguments, we conclude you have not established the requestor is, in fact, acting as the inmate's agent. We therefore conclude section 552.028 of the Government Code does not permit the sheriff's office to decline to comply with this request. Accordingly, we will address your argument against disclosure under the Act.

Section 552.101 of the Government Code exempts 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 section 261.201(a) of the Family Code, which provides as follows:

(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.

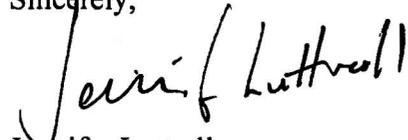
Fam. Code § 261.201(a). You state the submitted information was used or developed in investigations of alleged child abuse. Based on your representations and our review of the information at issue, we agree the submitted information is subject to section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (defining "abuse" for purposes of chapter 261 of the Family Code as including offense of aggravated sexual assault under section 22.021 of the

Penal Code); *see also* Penal Code § 22.011 (defining “child” for purposes of sexual assault of a child as person under 17 years of age). As you do not indicate the sheriff’s office has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the sheriff’s office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 459555

Enc. Submitted documents

c: Requestor
(w/o enclosures)