



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2012

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County Criminal District Attorney
401 West Belknap, Ninth Floor
Fort Worth, Texas 76196-0201

OR2012-14291

Dear Ms. Fourt:

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# 464917.

The Tarrant County District Attorney's Office (the "district attorney's office") received a request for the file for a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.114, 552.130, 552.132, 552.1325, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, portions of which are representative samples.¹

Initially, we must address the district attorney's office's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). While you raised section 552.101 within the ten-business-day time period as required by subsection 552.301(b), you did not raise sections 552.103, 552.108, 552.111, 552.114, 552.130, 552.132, 552.1325, and 552.147 within that time. Thus, the district attorney's office failed to comply with the requirements mandated by subsection 552.301(b) as to its

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

arguments under sections 552.103, 552.108, 552.111, 552.114, 552.130, 552.132, 552.1325, and 552.147 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested 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 (Tex. App.—Austin 1990, no writ); *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). You assert the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. However, sections 552.103, 552.108, and 552.111 are discretionary exceptions to disclosure and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions including section 552.111), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, because the district attorney's office's claims under sections 552.114, 552.130, 552.132, and 552.135 of the Government Code can provide compelling reasons for non-disclosure under section 552.302, we will address your arguments under those exceptions. We will also consider your timely raised argument against disclosure under section 552.101 of the Government Code.

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 section 261.201 of the Family Code, which provides in relevant part:

[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.

Fam. Code § 261.201(a). 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)(E) (defining “abuse” for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 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). Therefore, the submitted information is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.² We note that because section 261.201(a) protects all “files, reports, records, communications, audiotapes, videotapes, and working papers” relating to an investigation of alleged or suspected child abuse, the district attorney’s office must not release basic front-page information in such cases.

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 464917

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.