



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2013

Ms. Christina Alvarado
Assistant District Attorney
Dallas County
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207

OR2013-14214

Dear Ms. Alvarado:

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# 496440.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for all plea agreements, judgments or probation orders, judgments revoking probation, indictments, discharge orders, certificates of disposition, offense reports, and stipulations relating to three specified cause numbers involving a named individual. You state the district attorney's office does not possess information responsive to the portion of the request seeking plea agreements, judgments or probation orders, judgments revoking probation, and stipulations.¹ 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.

Initially, you acknowledge that the district attorney's office failed to comply with section 552.301 of the Government Code in requesting this decision. *See Gov't Code* § 552.301(b), (d). Pursuant to section 552.302 of the Government Code, a governmental

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception.

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 exception encompasses information made confidential by other statutes. Section 261.201 of the Family Code provides in part:

(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 [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You contend the submitted information is confidential under section 261.201 of the Family Code. Upon review, we agree the information at issue was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a)(2). *See id.* § 261.001(1)(E) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of aggravated sexual assault under Penal Code § 22.021); *see also* Penal Code § 21.11(c)(1) (defining child for purposes of section 22.021 as person younger than 17 years of age). You do not indicate the district attorney's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201(a) of the Family Code.

We note, however, the requestor is with the Texas Department of Criminal Justice Sex Offender Rehabilitation Program and states the information is needed in order to review the offender's case for possible civil commitment after release. Chapter 841 of the Health and Safety Code relates to the civil commitment of sexually violent predators. Section 841.142 of the Health and Safety Code provides in pertinent part:

(a) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under [chapter 841].

...

(e) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

Health & Safety Code § 841.142(a), (e). As previously noted, the requestor states her office needs the requested information in order to proceed with a review of a possible civil commitment of the offender by a multidisciplinary team. Section 841.022 of the Health and Safety Code provides in pertinent part:

(a) The executive director of the Texas Department of Criminal Justice and the commissioner of the Department of State Health Services jointly shall establish a multidisciplinary team to review available records of a person referred to the team under [chapter 841]. The team must include:

...

(2) two persons from the Texas Department of Criminal Justice, one of whom must be from the victim services office of that department[.]

...

(c) Not later than the 60th day after the date the multidisciplinary team receives notice under [chapter 841], the team shall:

- (1) assess whether the person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge;
- (2) give notice of that assessment to the Texas Department of Criminal Justice or the Texas Department of Mental Health and Mental Retardation, as appropriate; and
- (3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

Id. § 841.022(a)(2), (c). Thus, the multidisciplinary team is an entity charged with making an assessment or determination as to civil commitments under chapter 841 of the Health and Safety Code. Therefore, the requestor has a right of access to the submitted information pursuant to section 841.142 of the Health and Safety Code.

Although the submitted information is confidential under section 261.201 of the Family Code, section 841.142 of the Health and Safety Code provides the requestor with a right of access to the submitted information, regardless of whether the information is otherwise confidential. We note section 841.142 was enacted after section 261.201. Act of May 31, 1999, 76th Leg., R.S., ch. 1188, § 4.01, 1999 Tex. Gen. Laws 4143, 4150-51 (codified as Health & Safety Code § 841.142); Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Gen. Laws 113, 262 (codified as Fam. Code § 261.201). When the legislature enacts a statute, it is presumed to do so “with complete knowledge of the existing law and with reference to it.” *Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 301 (Tex. 1990); *CenterPoint Energy Houston Elec., LLC v. Gulf Coast Coalition of Cities*, 263 S.W.3d 448, 461 (Tex. App.—Austin 2008), *aff’d sub nom. Texas Indus. Energy Consumers v. CenterPoint Energy Houston Elec., LLC*, 342 S.W.3d 95 (Tex. 2009). Thus, we conclude the submitted information must be released to this requestor under section 841.142 of the Health and Safety Code.²

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.texasattorneygeneral.gov/open/>

²As noted, the requestor has a special right of access, beyond that of the general public, to any information being released in this instance. Therefore, if the district attorney’s office receives another request for this information from a different requestor, it must again seek a ruling from this office.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 496440

Enc. Submitted documents

c: Requestor
(w/o enclosures)