



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2013

Ms. Debbie F. Harrison
Assistant District Attorney
Civil Division
Collin County
2100 Bloomdale Road, Suite 100
McKinney, Texas 75071

OR2013-15918

Dear Ms. Harrison:

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# 499104.

The Collin County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case, specifically (1) any and all documents regarding any plea bargain offers made by the district attorney's office, (2) a specified presentence investigation report, (3) a specified report, (4) specified communications, and (5) a sentencing memorandum on behalf of the defendant. You indicate the district attorney's office does not possess documents responsive to categories 1 and 2.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from a third party on behalf of the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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).

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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [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 [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 state the submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code §§ 22.011(c)(1) (defining “child” for purposes of section 22.021 as “a person younger than 17 years of age”), .021(b)(1). Upon review, we find this information falls within the scope of section 261.201 of the Family Code. 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 no such regulation exists. Given that assumption, and based on our review, we determine the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the district attorney’s office must generally 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.²

The third party argues the requestor has a special right of access to the information pursuant to section 552.023 of the Government Code. Section 552.023 provides that a person or a person’s authorized representative has a special right of access to information that is

²The requestor asserts a right of access under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. This ruling does not affect an individual’s right of access to a patient’s medical records from the physician who provided treatment under the MPA. *See* Occ. Code §§ 159.004-.006; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).

excepted from public disclosure under laws intended to protect that person's privacy interest or by privacy principles under the Act. *See* Gov't Code § 552.023. We note section 261.201 of the Family Code has its own access provisions. *See* Fam. Code § 261.201(b)-(g), (i), (k). Further, section 261.201 does not protect only privacy interests, it also protects the interests of a governmental body. Thus, the requestor does not have a special right of access to the requested information under section 552.023 of the Government Code.

The third party also asserts confidentiality was waived in regard to the requested information because it was previously disclosed in open court. The third party relies upon the holding in *Patmore v. State*, 831 S.W.2d 97 (Tex. App.—Eastland 1992, no writ.), where the court found waiver of the confidentiality of former section 34.08 of the Family Code because a video that was used in an investigation of child abuse was disclosed to persons other than those privileged to view it and was used in a parole revocation hearing.³ *Id.* at 98. We note the *Patmore* case pertained to the admissibility of evidence in a judicial proceeding. *See id.* at 99. In this instance, the information was requested under the Act. Thus, release of the information at issue would be pursuant to the Act. We note section 552.352(a) of the Government Code provides “[a] person commits an offense if the person distributes information considered confidential under the terms of [the Act].” *See* Gov't Code § 552.352(a). Further, section 552.022(a)(17) of the Government Code states information in a public court record is subject to release unless the information is confidential under the Act or other law. *See* Gov't Code § 552.022(a)(17). Section 552.101 of the Government Code makes information confidential. As noted above, the submitted information is confidential under section 552.101 in conjunction with section 261.201 of the Family Code. Thus, regardless of whether any of the requested information at issue was previously disclosed in court, we find it is confidential by law and must now be withheld pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, the district attorney'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.

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/>

³Section 34.08 of the Family Code is the predecessor statute to section 261.201 of the Family Code. Act of April 10, 1995, 74th Leg., R.S., H.B. 655, § 2, 20 Tex. Gen. Laws 113, 282 (repealed 1995).

[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 that reads "Megan G. Holloway". The signature is written in a cursive, flowing style.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/dls

Ref: ID# 499104

Enc. Submitted documents

c: Requestor
(w/o enclosures)