



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2004

Mr. Michael A. McDougal
District Attorney
Montgomery County
301 North Thompson, Suite 106
Conroe, Texas 77301-2824

OR2004-5865

Dear Mr. McDougal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205180.

The Montgomery County District Attorney's Office (the "district attorney") received a request for the names and case numbers of any defendant whose case involved work by a specified nurse. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your assertion that the request is "overly broad and would inappropriately burden the District Attorney's Office with investigative responsibilities regarding said request." Section 552.222 of the Government Code permits a governmental body to ask the requestor to clarify or narrow the scope of the request. This section provides:

If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

However, a request for records made pursuant to the Public Information Act ("Act") may not be disregarded simply because a citizen does not specify the exact documents the citizen desires. Open Records Decision No. 87 (1975). Numerous opinions of this office have addressed situations in which a governmental body has received an "overbroad" written request for information. For example, Open Records Decision No. 561 at 8-9 (1990) states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In this instance, you do not give any indication that the district attorney contacted the requestor about clarifying or narrowing his request under section 552.301. Our ruling is therefore limited to only those documents that were actually submitted, and does not authorize the withholding of any other requested documents.

We note that the submitted information is subject to section 261.201 of the Family Code. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute.¹ Section 261.201 of the Family Code makes confidential reports and investigations of alleged or suspected child abuse or neglect and provides in part:

(a) The 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, and working papers used or developed in

¹ The Office of the Attorney General will raise mandatory exceptions like section 552.101 on behalf of a governmental body but will not ordinarily raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Having reviewed the submitted information, we find that it constitutes files, reports, records, communications, and working papers used or developed in an investigation of alleged child abuse and that it is therefore subject to section 261.201. You do not inform us that the district attorney has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that 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). Accordingly, the district attorney must withhold this information in its entirety in accordance with section 552.101 of the Government Code as information made confidential by law. Furthermore, because section 261.201(a) protects all “files, reports, communications, and working papers” related to an investigation of child abuse, the district attorney must not release front page offense report information in cases of alleged child abuse. As our ruling on this issue is dispositive, we need not address your section 552.108 claim.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 205180

Enc. Submitted documents

c: Mr. Steve McVicker
Houston Chronicle
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(w/o enclosures)