ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2006

Mr. John B. Setterberg
Assistant County and District Attorney
Fannin County
101 East Sam Rayburn Drive, Suite 301
Bonham, Texas 75418

OR2006-02423

Dear Mr. Setterberg:

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# 243939.

The Fannin County District Attorney's Office (the "district attorney") received a request for all records relating to the grand jury indictments of two named individuals. 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 district attorney is "not the proper officer and custodian of certain documents in the file[.]" The submitted documents are maintained by the district attorney in connection with the transaction of official business. *See* Gov't Code § 552.002(a) ("public information" defined as information collected, assembled, or maintained in connection with official business of governmental body). As records of the district attorney, these documents are subject to the Act regardless of whether they are available elsewhere. *See* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988) (virtually all information in physical possession of governmental body is public information). Consequently, the district attorney may only withhold the submitted documents from the requestor if they are excepted from disclosure pursuant to a provision of chapter 552 of the Government Code.

Next, we note that the submitted information relates to the alleged sexual assault of a child. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as Family Code section 261.201. Section 261.201(a) provides as follows:

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

Fam. Code § 261.201(a). The submitted information consists of records and reports used or developed in an investigation under chapter 261. *See id.* §§ 261.001 (defining "abuse" and "neglect" for purpose of chapter 261 of the Family Code); 101.003(a) (defining "child" for purposes of section 261.201 as a "person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes"). You have not indicated that the district attorney has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, 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 from disclosure under 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 remaining argument.

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).

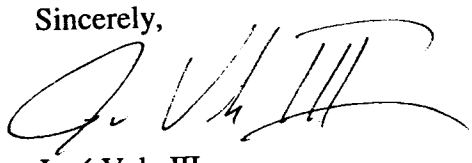
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 243939

Enc. Submitted documents

c: Ms. Glenda Gorden
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(w/o enclosures)