



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2007

Mr. David K. Walker
County Attorney, Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2007-09555

Dear Mr. Walker:

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 #284916.

The Montgomery County Sheriff's Department (the "department") received a request for a specified police report. You claim that 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.

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 other statutes. Section 261.201(a) of the Family Code 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). You indicate that the submitted report was used or developed in an investigation of alleged child abuse. Based upon your representations and our review, we find that the report is within the scope of section 261.201 of the Family Code. You do not

indicate that the sheriff has adopted a rule that governs the release of this type of information. However, section 261.201 also provides that information encompassed by subsection (a) may be released for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by an investigating agency. *See* Fam. Code § 261.201.

The requestor has not provided this office with any applicable federal or state law under which she would be entitled to the requested police report. Rather, the requestor has provided a court order appointing her as Amicus Attorney for the children involved in the requested report. Section 261.201 of the Family Code provides conditions on which information may be released under a court order. *See id.* § 261.201(b), (c). Although the court order states that the requestor was appointed in order to protect the best interests of the children, it does not specifically order the release of or grant a right of access to information that is confidential under section 261.201. Accordingly, the submitted information is confidential under section 261.201 of the Family Code, and the department must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor to section 261.201).¹

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).

¹We note that if the investigation has been referred to the Department of Family and Protective Services (the "DFPS"), the legal representative of a child who is a requestor may be entitled to access to the DFPS's records. Section 261.201(g) of the Family Code provides that the DFPS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 284916

Enc. Submitted documents

c: Ms. Jennifer James Robin
Attorney at Law
3091 College Park Drive, Suite 240-37
The Woodlands, Texas 77384
(w/o enclosures)