



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2009

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-05500

Dear Mr. Dodd:

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# 340987.

The Allen Police Department (the "department"), which you represent, received a request for a specified incident report. You claim that the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions 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 § 552.101.¹ This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

(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, audiotapes, videotapes, and working papers

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

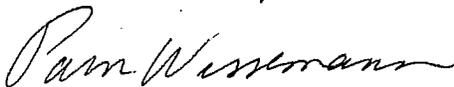
used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Our review of the submitted information shows it was used or developed in an investigation into alleged child abuse under chapter 261. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 as “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”). Therefore, we find that the information is within the scope of section 261.201 of the Family Code. You do not inform us that the department 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 in its entirety pursuant to section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department 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.³

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.oag.state.tx.us/open/index_or1.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

²We note that if the Texas Department of Family and Protective Services has created a file on this case, the requestor, as the child’s stepmother, may have the statutory right to review the file. *See* Fam. Code § 261.201(g).

³As our ruling is dispositive, we need not address your arguments against disclosure of the submitted information.

Ref: ID# 340987

Enc. Submitted documents

c: Requestor
(w/o enclosures)