



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2009

Ms. M. Ann Montgomery
Ellis County and District Attorney's Office
Temporary Administration Building
1201 North Highway, Suite 104
Waxahachie, Texas 75165-7832

OR2009-11223

Dear Ms. Montgomery:

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# 352005.

The Ovilla Police Department (the "department") received a request for seven categories of information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the instant request requires the department to compile a list of information. The Act does not require a governmental body to make available information which does not exist nor does it require a governmental body to compile information or prepare new information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested, a list, or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). In this instance, the requestor asks for seven categories of information pertaining to a specified incident, but does not request that such information

be supplied as a "list" or in any other particular format. You make no assertion that the department does not maintain the requested information. Upon review, we find the submitted information is responsive to the request. Thus, while the department need not distill the requested information into the form of a list, it must nevertheless release information that it in good faith believes to be responsive to the request unless such information may or must be withheld pursuant to one of the Act's exceptions to disclosure. We turn therefore to your claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.

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 made confidential by statute, such as section 261.201(a) of the Family Code. 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, audiotapes, videotapes, 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 relates to an investigation of an alleged injury to a child. *See id.* § 261.001 (1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of this section 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). Upon review, we find that this information falls within the scope of section 261.201. You do not indicate that the department has adopted a rule governing the release of this type of information. Therefore, we find that the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing 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.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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_orl.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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 352005

Enc. Submitted documents

cc: Requestor
(w/o enclosures)