



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2009

Ms. Sue Koriath
Assistant Criminal District Attorney
Kaufman County Criminal District Attorney
100 West Mulberry Street
Kaufman, Texas 75142

OR2009-15976

Dear Ms. Koriath:

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# 360992.

The Kaufman County Criminal District Attorney's Office (the "district attorney") received a request for the district attorney's entire file in Case Number 23453-422.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the district attorney failed to meet its obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). Section 552.301(e) requires that a governmental body submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply

¹We note that the requestor excluded from his request attorney work product, criminal history information, information identifying victims, and motor vehicle information. Accordingly, any such information within the requested information is not responsive to this request. The district attorney need not release non-responsive information and this ruling will not address it.

to which parts of the documents. *See id.* § 552.301(e)(1)(D). The district attorney originally received the request on July 28, 2009. Because the district attorney's estimated cost to process the request was over one hundred dollars, the district attorney explains it required the requestor to make a deposit for payment of the anticipated costs in accordance with section 552.263 of the Government Code. Section 552.263(a) provides that a governmental body may require a deposit for payment of anticipated costs if the estimated cost exceeds one hundred dollars if the governmental body has more than 15 full-time employees. *Id.* § 552.263(a)(1). Further, section 552.263(e) provides if the governmental body requires a deposit under section 552.263, a request for public information is considered to have been received by the governmental body on the date the governmental body receives the deposit. *Id.* § 552.263(e). The district attorney informs us that it received the deposit on August 28, 2009. Thus, pursuant to section 552.263(e), August 28, 2009, is the date the district attorney received this request for the purposes of section 552.301. Accordingly, the district attorney's ten-business-day deadline was September 14, 2009 and the fifteen-business-day deadline was September 21, 2009.² The district attorney submitted a request for a ruling from this office and a copy of the specific information requested on September 4, 2009. *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). Thus, we find that the district attorney fully complied with section 552.301.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he 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.

²We note that September 7, 2009 was the Labor Day Holiday.

Fam. Code § 261.201(a). You state that the submitted information was used or developed in an investigation into alleged child abuse or neglect. Based on your representations and our review of the information at issue, we agree that the submitted information is subject to section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *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). As you do not indicate that the district attorney has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the district attorney 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 *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 360992

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.