



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2010

Mr. John P. Ferguson
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-10139

Dear Mr. Ferguson:

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# 389032 (ORA # 10-1113).

The Texas Department of Public Safety (the "department") received a request for communications regarding any FLDS member or entity, including the YFZ Ranch in Eldorado, Texas, and involving the Texas Rangers; investigators and prosecutors; and six specified individuals and time intervals. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that some of the submitted communications involving the six individuals did not occur during the corresponding time interval specified by the requestor. Thus, those communications, which we have marked, are not responsive to the instant request for information. This decision does not address the public availability of the submitted communications that are not responsive to the instant request.

We next note that the department did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) provides in part that a governmental body must submit a copy of the written request for information to this office no later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(e) (1)(B). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is

presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You state that the department received the instant request for information on May 17, 2010; therefore, the department's fifteen-business-day deadline under subsection 552.301(e) was June 8. The department did not provide this office with a copy of the instant request for information until June 21. Thus, the department did not comply with section 552.301 in requesting this decision, and the responsive information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although the department claims section 552.108 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The department's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302 of the Government Code. *See* Open Records Decision No. 586 at 2-3 (1991). In failing to comply with section 552.301 of the Government Code, the department has waived section 552.108 and may not withhold any of the responsive information under that exception. *See* Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). The department also claims section 552.101 of the Government Code, which can provide a compelling reason for non-disclosure. Accordingly, we will address the department's claim under section 552.101.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(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 [the Family 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 [chapter 261 of the Family Code] 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

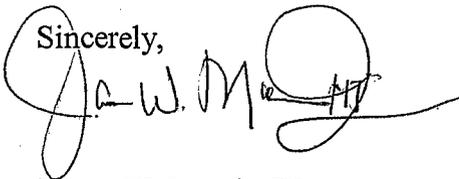
[chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that the responsive information was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 261.001(1) (defining “abuse” for the purposes of Fam. Code ch. 261), 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). You also state that the department’s rule pertaining to disclosure of this type of information is not applicable in this instance. *See* 37 T.A.C. § 1.60 (describing situations in which chapter 261 information may be released to the parent or guardian of an alleged victim). Based on your representations and our review of the information at issue, we conclude that the department must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code as information made confidential by law. *See* Open Records Decision No. 440 at 2 (1986) (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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/tp

Ref: ID# 389032

Enc: Submitted documents

c: Requestor
(w/o enclosures)