



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 21, 2011

Mr. Martin L. Peterson
Assistant District Attorney
Dallas County District Attorney's Office
133 North Riverfront Blvd., LB-19
Dallas, Texas 75207-4399

OR2011-05565

Dear Mr. Peterson:

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# 415198.

The Dallas County District Attorney (the "district attorney") received a request for the basic, front page information relating to a specified case, as well as warrants and warrant affidavits related to the same case. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received 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 note most of the submitted information is not responsive to the request for information, which only seeks basic information, the arrest warrant, and the arrest warrant affidavit.¹ Thus, any information that is outside the scope of basic information or is not the arrest warrant or arrest warrant affidavit is not responsive to the request. This decision does not address the public availability of nonresponsive information, and the district attorney need not release that information to the requestor. To the extent that the submitted

¹Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

information is responsive to the request, we will consider your arguments against its disclosure.

Next, we address the requestor's assertion that the district attorney failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code by not including a copy of Exhibit 2 along with the copy of the district attorney's brief sent to him. Exhibit 2 consists of an e-mail communication to the requestor from the district attorney and the information responsive to the request. Section 552.301(e-1) states a "governmental body that submits written comments to the attorney general . . . shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request." *Id.* § 552.301(e-1). We find the requestor's receipt of the district attorney's February 10, 2011 brief, which provides the substance of the district attorney's arguments under section 552.101, satisfies the statutory requirement under section 552.301(e-1). Thus, the district attorney complied with the procedural requirements set out in section 552.301(e-1).

Next, we address the requestor's contention that the requested arrest warrant affidavit was previously released to the public. To support his contention, the requestor has submitted a newspaper article in which the reporter states she has obtained the affidavit. Based on the submitted information, we are unable to determine whether the district attorney released the arrest warrant affidavit to the public. However, we note that section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, if the district attorney has previously released the affidavit at issue, the district attorney may not now withhold the previously released affidavit unless its release is expressly prohibited by law or the information is confidential under law. You raise sections 552.101 and 552.130 of the Government Code for the arrest warrant affidavit. Section 552.101 and section 552.130 make information confidential under law; thus, we will consider your arguments under sections 552.101 and 552.130 for the submitted information.

Next, we note the requestor asserts the submitted information includes court filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Upon review, we find none of the responsive information constitutes a court filed document for purposes of section 552.022(a)(17).

Next, we address your argument under section 552.101 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 other statutes, such as section 261.201(a) of the Family Code, which provides:

(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.

Fam. Code § 261.201(a). You contend the responsive information is confidential under section 261.201(a) because it pertains to an investigation of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of Fam. Code ch. 261 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 agree the responsive information was used or developed in an investigation of child abuse and falls within the scope of chapter 261 of the Family Code. You do not inform us that the district attorney has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the responsive information is confidential pursuant to section 261.201 of the Family Code and must therefore be withheld in its entirety pursuant to section 552.101. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). As 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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 415198

Enc. Submitted documents

c: Requestor
(w/o enclosures)