



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2013

Mr. John R. Adamo
Director
Administrative Legal Services
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2013-01014

Dear Mr. Adamo:

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# 477710.

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to the requestor's child. You state that, in accordance with section 261.201(g) of the Family Code and the department's rules, the department will release records pertaining to an investigation conducted by Child Protective Services, with the exception of copies of recorded telephone calls that reveal the reporter's identity. *See* Fam. Code § 261.201(a), (g); 40 T.A.C. §§ 700.204, 700.206; *see also* Open Records Letter No. 2003-5590 (2003) (granting department previous determination to withhold or release child abuse and neglect records subject to department rule without necessity of requesting opinion under Gov't Code § 552.301). You also indicate the department will release records pertaining to an investigation conducted by Adult Protective Services in accordance with section 48.101(d) and the department's rules. *See* Hum. Res. Code § 48.101(a), (d); 40 T.A.C. § 705.7107(1)(C). We understand you seek to withhold the remaining responsive information under section 552.107 of the Government Code. We have considered the exception you claim. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The department seeks to withhold responsive attorney-client communications pursuant to section 552.107 of the Government Code. However, for such information, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The department received the request for information on November 7, 2012. We understand the department was closed for business on November 22 and November 23, 2012. Thus, the department's fifteen-business-day deadline under section 552.301(e) was November 30, 2012. However, as of this date of this letter, the department has not submitted a copy or representative samples of any responsive attorney-client communications. Therefore, the department failed to comply with the procedural requirements mandated by section 552.301(e) for this information.

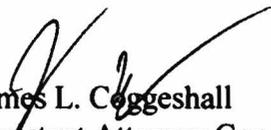
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exception at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302. Section 552.107 of the Government Code is discretionary in nature; it serves only to protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 522 (1989) (discretionary exceptions in general). Therefore, the department has waived section 552.107 and may not withhold any of the information at issue on that basis. Accordingly, to the extent the requested attorney-client communications existed on the date the department received the request for information, the department must release that information to the requestor.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 477710

c: Requestor