



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2014

Mr. G. Brian Garrison
Assistant District Attorney
Dallas County District Attorney's Office
Frank Crowley Courts Building
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2014-11160

Dear Mr. Garrison:

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# 528745.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for the district attorney's office's file pertaining to a specified cause number. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the district attorney's office's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the district attorney's office received the request for information on April 17, 2014. You do not inform us the district attorney's office was closed for any business days between April 17, 2014 and May 1, 2014. Accordingly, the ten-business-day deadline for requesting a ruling from this office was May 1, 2014. The envelope in which the district attorney's office requested a ruling from this office bears a postmark of May 2, 2014. *See id.* § 552.308 (describing rules

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the district attorney's office failed to comply with the procedural requirements of section 552.301(b) of the Government Code in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.108 of the Government Code is a discretionary exception that protects only a governmental body's interests and may be waived. *See Simmons*, 166 S.W.3d at 350 (section 552.108 not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the district attorney's office may not withhold the submitted information under section 552.108. However, because sections 552.101 and 552.132 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information.

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 protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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 [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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate the district attorney’s office has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we determine the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the district attorney’s office 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. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', followed by a large, stylized circular flourish.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/bhf

Ref: ID# 528745

Enc. Submitted documents

c: Requestor
(w/o enclosures)