



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2015

Mr. Matthew Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2015-26266

Dear Mr. Grove:

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# 590529.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for (1) all e-mails between two named individuals regarding a specified case involving a named individual and (2) all criminologist reports and any evidence or lack thereof in the specified case including any e-mails or written communications. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the policy of the Fort Bend County Information Technology Office (the "county") is to maintain e-mails on the county's servers for one year. You state, in addition to the information that was located, the sheriff's office may have information responsive to the request that exists only as backup data on magnetic tapes. You explain that e-mails more than one year old are deleted and are not maintained on the user's hard drive, unless the user personally archives the information. You state any e-mails responsive to the current request exist only as backup data stored remotely on magnetic tapes. You state that in order to restore the information at issue, the county would be required to load backup tapes and program and/or manipulate data through use of software to be able to search the content of the archived information. You contend such information is not considered to be "maintained" by the sheriff's office for purposes of the Act.

We note computer software programs generally keep track of the location of files by storing the location of data in the "file allocation table" (FAT) of a computer's hard disk. The software then displays the file as being in a specific storage location. Usually, but not always, when a file is "deleted," it is not actually deleted, but the display of its location is merely shown to be moved to a "trash bin" or "recycle bin." Later, when files are "deleted" or "emptied" from these "trash bins," the data is usually not deleted, but the location of the data is deleted from the FAT. Some software programs immediately delete the location information from the FAT when a file is deleted. Once the location reference is deleted from the FAT, the data may be overwritten and permanently removed. Thus, based on your representations, we conclude the locations of any information stored on backup tapes have been deleted from the FAT system. Therefore, we agree any such information was no longer being "maintained" by the sheriff's office at the time of the present request and does not constitute public information subject to disclosure under the Act. See Gov't Code §§ 552.002 (public information consists of information written, produced, collected, assembled, or maintained under law or ordinance or in connection with transaction of official business by or for governmental body or by individual officer or employer of governmental body in official capacity and pertaining to official business of governmental body), .021; *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). Thus, the Act does not require the sheriff's office to release any information that was stored on backup tapes when the sheriff's office received the present request for information.

Section 552.101 of the Government Code excepts from public 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 section 261.201 of the Family Code, which provides, in part, 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.

Fam. Code § 261.201(a). You state the submitted information relates to an investigation of alleged or suspected child abuse or neglect conducted by the sheriff's office. See *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); § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of

chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ 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.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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 590529

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.