



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 15, 2017

Ms. Jennifer Montoya  
Department of Records  
Anderson County Sheriff's Office  
1200 East Lacy  
Palestine, Texas 75801

OR2017-10396

Dear Ms. Montoya:

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# 657632.

The Anderson County Sheriff's Office (the "sheriff's office") received two requests for information pertaining to a specified incident. The second requestor also seeks information pertaining to another specified incident involving a named individual. The sheriff's office states it has no information responsive to portions of the second request.<sup>1</sup> The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>2</sup> We have considered the claimed exceptions and reviewed the submitted information. We have also received and considered comments from

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We note the sheriff's office did not raise section 552.101 of the Government Code within ten business days of the date the sheriff's office received the first request. *See* Gov't Code § 552.301(b). However, because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this exception to the submitted information, notwithstanding the sheriff's office's violation of section 552.301(b) in raising this exception. *See id.* § 552.302.

one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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.” *Id.* § 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 [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 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). The submitted information relates to investigations 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 section 261.201 of the Family Code. The sheriff's office does not indicate it 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.<sup>3</sup> *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.

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<sup>3</sup>As our ruling is dispositive, we need not address the sheriff's office's remaining arguments against disclosure of the submitted information.

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](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 "Gerald A. Arismendez". The signature is fluid and cursive, with a large loop at the end.

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/som

Ref: ID# 657632

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)