



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 19, 2017

Ms. Ann-Marie Sheely  
Assistant County Attorney  
Travis County Attorney's Office  
P.O. Box 1748  
Austin, Texas 78767

OR2017-24000

Dear Ms. Sheely:

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# 680585.

The Travis County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information related to a specified incident.<sup>1</sup> You state you do not have information responsive to a portion of the requests.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we must address the sheriff's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in

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<sup>1</sup>As you have not submitted a copy of the first request for information for our review, we take our description from your brief to our office.

<sup>2</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>3</sup>We 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.

asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. 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. *See id.* § 552.301(e). You state the sheriff's office received the first request for information on August 3, 2017. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(e) for the first request by August 24, 2017. However, as of the date of this ruling, you have not submitted a copy of the first written request for information. Consequently, we conclude the sheriff's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to the first request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). Although you claim section 552.108 of the Government Code for the information submitted with respect to the first request, we find you have failed to establish a compelling reason to address your claim under this exception. Accordingly, the sheriff's office may not withhold the information responsive to the first request under section 552.108. However, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness.<sup>4</sup> Therefore, we will address the applicability of section 552.101 to the submitted information. Furthermore, we will consider your claim under section 552.108 of the Government Code with respect to the information that is only responsive to the second request, for which the sheriff's office complied with the procedural requirements under section 552.301.

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 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

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). Upon review, we find the submitted information was used or developed in an investigation by the sheriff's office of alleged child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201 of Family Code). You have not indicated the sheriff's office has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the submitted information is confidential under section 261.201 of the Family Code, and the sheriff's office must withhold it under section 552.101 of the Government Code.<sup>5</sup>

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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

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<sup>5</sup>As our ruling is dispositive, we need not address your argument against disclosure.

Ref: ID# 680585

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)