



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2019

Mr. Juan A. Roque
Assistant District Attorney
Bexar County District Attorney's Office
101 West Nueva Street
San Antonio, Texas 78205

OR2019-12361

Dear Mr. Roque:

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# 771460 (DA File No. 7298).

The Bexar County District Attorney's Office (the "district attorney's office") received a request for specified video recordings related to a specified incident.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹We note the district attorney's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note, and you acknowledge, you failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. See Gov't Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. See *id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information.

Initially, we note the requestor only seeks specified video recordings related to the specified incident. Accordingly, the remaining information you have submitted is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the district attorney's office is not required to release such information in response to this request.³

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). The responsive information at issue was used or developed in an investigation conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *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 district attorney's office has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the district attorney's office must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *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.

³As we are able to make this determination, we need not address your argument against disclosure of this 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, 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 "Tim Neal". The signature is stylized with a large, looped "T" and "N".

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 771460

Enc. Submitted documents

c: Requestor
(w/o enclosures)