



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 9, 2020

Mr. Davis Woudwyk  
Assistant Criminal District Attorney  
Smith County  
100 North Broadway, 4th Floor  
Tyler, Texas 75702

OR2020-25424

Dear Mr. Woudwyk:

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# 848521.

The Smith County Criminal District Attorney's Office (the "district attorney's office") received a request for certain information pertaining to a specified case. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

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<sup>1</sup> We assume that 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.

Gov't Code § 552.022(a)(17). The submitted information consists of court-filed documents that are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* The district attorney's office seeks to withhold the information subject to section 552.022(a)(17) under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district attorney's office may not withhold the submitted information under section 552.103 of the Government Code. However, as section 552.101 of the Government Code applies to confidential information, we will consider the district attorney's office's arguments under this exception for 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. Section 261.201 of the Family Code provides, in relevant 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 district attorney's office states the submitted information pertains to an investigation of alleged or suspected child abuse or neglect. *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). Upon review, we find some of this information is subject to section 261.201 of the Family Code. The district attorney'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 district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, upon review, we find the district attorney's office has failed to demonstrate any portion of the remaining

information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, the district attorney's office has not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4). Therefore, the remaining information may not be withheld under section 552.101 in conjunction with section 261.201, and the district attorney's office must release it.<sup>2</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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/eb

Ref: ID# 848521

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the information being released contains partial social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a person's social security number without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. However, we also note the requestor has a right of access to her own social security number and it must be released to her. *See generally id.* § 552.023(b) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).