

# Juvenile Law Case Summaries

By  
**Robert O. Dawson**  
Bryant Smith Chair in Law  
University of Texas School of Law

[2001 Case Summaries](#)   [2000 Case Summaries](#)   [1999 Case Summaries](#)

---

***Law enforcement record relating to investigation of child abuse or neglect not subject to disclosure under open records act [OR2001-1735] (01-3-35).***

On April 27, 2001, the Attorney General ruled in an open records opinion that a law enforcement record that deals with the death of a child under circumstances that might have constituted abuse or neglect is exempt from disclosure under the open records act by virtue of a confidentiality provision in Title 5 of the Family Code.

01-3-35. Attorney General Opinion No. OR2001-1735, 2001 WL 949257, 2001 Tex.Ag.Lexis \_\_\_\_ (4/27/01) [Texas Juvenile Law (5th Edition 2000)].

Ms. Sarajane  
Milligan Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002-1700

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 146516.

The Harris County Sheriff's Department (the "department") received a request for the official report on the death of a specified individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body must request a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The department received the request on November 3, 2000 and, therefore, had until November 17, 2000 to request a decision. Because the request for a decision was faxed and postmarked on February 23, 2001, you failed to request a decision pursuant to section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not demonstrated a compelling reason under section 552.108 to overcome the presumption of openness. But see Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

However, you also argue that the submitted information is excepted under section 552.101 of the Government Code. Section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness.

See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will address this exception.

You claim that the submitted information is excepted under section 552.101 in conjunction with section 58.007 of the Family Code. Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007(c). However, section 58.007(c) of the Family Code only pertains to juvenile offenders. Because the requested information does not involve a juvenile offender, section 58.007(c) does not apply to the requested information.

However, we note that the submitted information pertains to an investigation of whether a child died as a result of neglect. Section 261.201(a) of the Family Code provides that:

(a) The 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.

The requested information consists of an incident report used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the department has adopted with regard to the release of this type of information, we assume that no such regulation exists. We therefore conclude that the requested information is confidential under section 261.201 of the Family Code. See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must withhold the submitted information from disclosure under section 552.101 of the Government Code as information made confidential by law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

*[Balance of letter dealing with disclosure and appeal procedures is omitted.]*

Sincerely,

Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

---

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)