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Update from the Attorney General's Office

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Background:

The Attorney General, under state law, is granted authority to issue formal opinions providing written interpretation of existing law.¹ The Attorney General may only issue an opinion to officials who are authorized to request formal attorney general opinions on questions of law. Those authorized officials are:

1. the governor;
2. the head of a department of state government;
3. a head or board of a penal institution;
4. a head or board of an eleemosynary institution;
5. the head of a state board;
6. a regent or trustee of a state educational institution;
7. a committee of a house of the legislature;
8. a county auditor authorized by law; or
9. the chairman of the governing board of a river authority.²

An acknowledgment of receipt is required by the Office of the Attorney General (OAG) by not later than the 15th day after the date that the request is received.³ Opinions are required to be issued by no later than the 180th day after the date that the request is received, unless prior to the deadline, the OAG notifies the requesting party in writing that the opinion will be delayed or not rendered. The OAG must also provide the reasons for the delay or refusal to issue an opinion.⁴ The deadlines may be waived by the OAG and the requesting party as long as the waiver does not substantially prejudice any person's legal rights.⁵

Pending requests may be closed without an opinion being issued. Reasons for closure may include:

1. The opinion requestor withdrew the request
2. The issue raised in the request was found to be the subject of pending litigation
3. The chair of a legislative committee indicated no interest in continuing with a pending request submitted by a predecessor
4. Other reasons:
 - a. the original requestor is no longer authorized;
 - b. the attorney general declined to issue the opinion under section 402.042(c)(2) of the Government Code;
 - c. the request was combined with another pending request of the same issues; or

¹ TEX. GOVT. CODE ANN. §402.042 and §402.043 (West 2014).

² TEX. GOVT. CODE ANN. §402.042(b) (West 2014).

³ TEX. GOVT. CODE ANN. §402.042(c)(1) (West 2014).

⁴ TEX. GOVT. CODE ANN. §402.042(c)(2) (West 2014).

⁵ TEX. GOVT. CODE ANN. §402.042(d) (West 2014).

- d. providing an answer to the request would require resolution of factual issues not appropriate for the opinion process.⁶

The Office of the Attorney General is also authorized to issue formal Open Records Decisions (ORD)⁷ and informal Open Records Memorandum Rulings (also referred to as Letter Rulings). In contrast to opinions authorized by Texas Government Code, Chapter 402, any governmental entity representative may request an ORD or Letter Rulings. The ORDs are formal opinions relating to the Public Information Act (PIA). The informal letter rulings decisions determine whether information is open to the public under the PIA and other applicable laws. From 2003-2015, 11 ORDs were issued.⁸ The informal letter rulings comprise the overwhelming workload of the OAG's Open Government Division. In 2014 alone, the OAG issued over 22,000 letter rulings. Letter rulings are limited to the particular records at issue in a request and limited to the facts presented to the OAG. Therefore, a letter ruling is not a previous determination regarding any other records or any other circumstances.

The following summary and chart represents opinions, ORDs and ORLs from January 2014 – January 20, 2015.

Formal Open Records Decision:

Open Records Decision No. 688 – re: Questions concerning the applicability of section 552.1085 of the Government Code to information subject to certain rules of the Texas Department of Family and Protective Services⁹

The Texas Department of Family and Protective Services Department (Department) conducts certain child abuse or neglect investigations jointly with an appropriate state or local law enforcement agency. In the course of the investigation, the law enforcement agency is required to provide the Department with documentation. Six questions were presented by the Department. However, the OAG responded to the following question to issue its ruling:

1. In the event the Department engaged in a joint investigation with a law enforcement agency and copies of photographs taken at a crime scene during that joint investigation are stored in the Department's records, do the Department's rules [adopted pursuant to Family Code section 261.201(a) in chapter 700 of title 40 of the Texas Administrative Code] concerning access to photographs that are part of a child abuse or neglect case file control, or is access to the photographs requested from the Department subject to the requirements of [s]ection 552.1085 [of the] Government Code?

Texas Government Code, Section 552.1085 provides an exception to disclosure under the PIA for sensitive crime scene images. Texas Family Code, Section 261.201(a) makes "confidential"

⁶ Office of the Attorney General website, <https://www.texasattorneygeneral.gov/opinion/about-attorney-general-opinions>

⁷ TEX. GOVT. CODE ANN. Chapter 502 (West 2014).

⁸ Office of the Attorney General website, <https://www.texasattorneygeneral.gov/og/greg-abbott-open-records-decisions-2003-2015-pdf>

⁹ <https://www.texasattorneygeneral.gov/opinions/openrecords/50abbott/ord/2014/pdf/ord20140688.pdf>

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