



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2015

Ms. Karol Davidson
Staff Attorney
Texas Juvenile Justice Department
P.O. Box 12757
Austin, Texas 78711

OR2015-11837

Dear Ms. Davidson:

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# 567499 (TJJD ORR #26517).

The Texas Juvenile Justice Department (the "department") received a request for information pertaining to a specified incident involving the requestor. You claim the submitted 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 representative sample of information.¹

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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

¹We 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.

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 department received the instant request on March 26, 2015. Therefore, we find the department's fifteen-business-day deadline under section 552.301(e) was April 16, 2015. However, the department did not submit the information required by section 552.301(e) until April 20, 2015. Consequently, we find the department failed to comply with the requirements of section 552.301.

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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the department seeks to withhold the submitted information under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of a governmental body, other than the one that failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason under section 552.302. Open Records Decision No. 586 (1991). You assert, and provide documentation showing, the Special Prosecution Unit (the "unit") has a law enforcement interest in the submitted information. Therefore, we will consider whether the department may withhold the submitted information on behalf of the unit under section 552.108. Further, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider its applicability to 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in relevant part, as follows:

- (a) Except as provided by Section 261.203, the 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). We note the department is authorized to conduct an investigation under chapter 261 of the Family Code.² *See id.* § 261.401(b) (state agency that provides oversight of program that serves children shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in program). You state the department's Administrative Investigations Division ("AID") is responsible for conducting these chapter 261 investigations.

Upon review, we find the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Family Code chapter 261); *see also 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 disabilities of minority removed for general purposes). Therefore, the submitted information falls within the scope of section 261.201(a) of the Family Code. We note the department has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See id.* § 261.409 (department by rule shall adopt standards for investigation under section 261.401 of Family Code); 37 T.A.C. § 380.9333. You state the requestor does not have a right of access to the information subject to section 261.201(a)(2) of the Family Code under the department's rules in this instance. Accordingly, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³

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/>

²Effective December 1, 2011, the Texas Youth Commission became known as the Texas Juvenile Justice Department. *See* Hum. Res. Code § 201.001(b).

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

[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 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 567499

Enc. Submitted documents

c: Requestor
(w/o enclosures)