



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 28, 2015

Ms. Laura Russell
Attorney
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2015-18043

Dear Ms. Russell:

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# 577834 (TPWD No. 2015-06-R26).

The Texas Parks and Wildlife Department (the "department") received a request for information pertaining to a specified boating accident involving named individuals on a specified date. You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. You also raise section 552.110 of the Government Code for portions of the requested information, although you take no position with respect to section 552.110. Instead, you state release of this information may implicate the proprietary interests of a certain third party. Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from Safe Boats International, LLC. We have considered the submitted arguments and reviewed the submitted information.¹

¹We note the department did not comply with the requirements of section 552.301 of the Government Code. *See Gov't Code* § 552.301(e). Nevertheless, sections 552.101 and 552.110 of the Government Code are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the applicability of these sections to the submitted information.

Section 552.101 of the Government Code exempts 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, such as section 261.201 of the Family Code, which provides, in relevant part:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). The submitted information was used or developed in an investigation by the department of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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). Upon review, we find the submitted information is within the scope of section 261.201 of the Family Code. Although the requestor represents a parent of the alleged child victim, we note the parent is a possible suspect. *See id.* § 261.201(k). You have not informed us, or otherwise indicated, the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find the submitted information is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Accordingly, the department

must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

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/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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 577834

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Mr. Dennis Morris
Safe Boats
8800 SW Barney White Road
Bremerton, Washington 98312-4921
(w/o enclosures)

²As our ruling is dispositive, we do not address the remaining submitted arguments.