



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2015

Mr. Ron G. MacFarlane, Jr.
The MacFarlane Firm
Counsel for the City of Cedar Hill
400 East Royal Lane, Suite 290
Irving, Texas 75039

OR2015-25721

Dear Mr. MacFarlane:

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# 590063.

The Cedar Hill Police Department (the "department"), which you represent, received a request for a specified offense report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request for information. Gov't Code § 552.301(b). In this instance, you state the department received the request on September 4, 2015. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. We note September 7, 2015, was a holiday. Accordingly, the department's ten-business-day deadline was September 21, 2015. The envelope in which you originally submitted your request for a ruling, comments explaining why its stated exception applies, and a copy of the information requested bears a postmark of September 14, 2015. You explain, however, and the submitted information reflects, the original submission was returned to your office as undeliverable, and you again

mailed the required information to this office. Section 552.308 of the Government Code provides when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail “with postage . . . prepaid” and the postmark date is within the required time period. *See id.* § 552.308. The envelope in which you again mailed the required information to this office does not bear a postmark date and you have not furnished satisfactory proof this information was deposited in the mail within the ten-business-day deadline. Therefore, our office has no evidence that is sufficient to establish the department provided the information required by section 552.301(b) to our office within ten business days of receiving the request. *See id.* Our office received the information required by section 552.301(b) on October 1, 2015. Because the department did not submit the information required by section 552.301(b) within the required time period, we find the department failed to comply with the requirements of section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342,350 (Tex.App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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 asserts the information at issue is excepted under section 552.108 of the Government Code, section 552.108 is discretionary in nature. It serves only to protect a governmental body’s interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the department waived its claim under section 552.108. However, we note the documents are subject to section 552.101 of the Government Code, which provides a compelling reason that overcomes the presumption of openness.¹ Thus, we will address this exception.

Section 552.101 of the Government Code excepts “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 as follows:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, 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). We note the submitted information was used or developed by the department in an investigation 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 the disabilities of minority removed for general purposes). Thus, we find this information is generally confidential under section 261.201 of the Family Code. In this instance, although the requestor is a parent of the child victims listed in the information, the requestor is suspected of having committed the alleged or suspected abuse or neglect. Therefore, this information may not be provided to the requestor pursuant to section 261.201(k). *Id.* § 261.201(k). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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,

A handwritten signature in black ink that reads "Mili Gosar". The signature is written in a cursive, flowing style.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/eb

Ref: ID# 590063

Enc. Submitted documents

c: Requestor
(w/o enclosures)