



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2016

Ms. Leslie O. Haby
Assistant Criminal District Attorney
Civil Section
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2016-16350

Dear Ms. Haby:

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# 621106.

The Bexar County Medical Examiner's Office (the "medical examiner's office") received three requests for a specified autopsy report. You claim the submitted information is excepted from public disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the medical examiner's office's procedural 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. *See* Gov't Code § 552.301. Pursuant to 552.301(b), a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days of receiving the written request. *See id.* § 552.301(b). In this instance, you state the medical examiner's office received the first request for information on May 11, 2016. Accordingly, you were required to provide the information required by section 552.301(b) by May 25, 2016. The envelope in which the medical examiner's office provided the information required by section 552.301(b) was postmarked May 27, 2016. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating

¹Although you also raise section 552.101 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

time within the deadline period). Accordingly, we conclude the medical examiner's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *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). Section 552.108 of the Government Code is a discretionary exception that protects only a governmental body's interests and may be waived. *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 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the medical examiner's office may not withhold the submitted information under section 552.108 based on its own interest. However, the law enforcement interests of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). In this instance, the medical examiner's office has provided a letter from the San Antonio Police Department (the "department") objecting to disclosure of the requested information pursuant to section 552.108 of the Government Code. Accordingly, we will consider whether the medical examiner's office may withhold the submitted information on behalf of the department under section 552.108. Further, we note the submitted information is subject to section 552.101 of the Government Code, which is a compelling reason to withhold information because section 552.101 makes information confidential. Thus, we will also consider section 552.101.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides:

(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:

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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 medical examiner's office is not an agency authorized to conduct an investigation under chapter 261. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the submitted information was used in an investigation of alleged or suspected child abuse conducted by the department. Thus, we conclude the information falls within the scope of section 261.201 of the Family Code. *See also id.* §§ 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code), 261.001(1) (defining "abuse" for purposes of this section). Therefore, we conclude the submitted information is confidential pursuant to section 261.201 of the Family Code, and the medical examiner's office must withhold it under section 552.101 of the Government 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/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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/eb

³As our ruling is dispositive, we need not address your argument against disclosure of the submitted information.

Ref: ID# 621106

Enc. Submitted documents

c: Requestor
(w/o enclosures)