



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2011

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2011-16103

Dear Ms. McGowan:

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# 435027 (ORR No. 10493).

The Dallas Independent School District (the "district") received a request for information related to a specified investigation. You claim the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow when requesting a decision from this office. Pursuant to section 552.301(e), within fifteen business days after receiving the request the governmental body must submit to this office, among other things, a copy of the request for information. *See* Gov't Code § 552.301(e). You state the district received this request for information on August 18, 2011. Accordingly, the fifteen-business-day deadline fell on September 8, 2011. The district first submitted the requested information on August 30, 2011; however, the copy of the request for information was illegible. We requested a legible copy of the request from you on September 2, 2011; however, you did not submit such information until October 19, 2011. Because this office did not receive a legible copy of the request for information within the statutory deadline, we conclude the district failed to comply with section 552.301(e).

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 that 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). Because sections 552.101 and 552.135 can provide compelling reasons to overcome the presumption of openness, we will consider your arguments against disclosure of 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(a) of the Family Code, which provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). You claim the submitted information is confidential under section 261.201. We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you state the district has on staff an employee who is shared with the Texas Department of Family and Protective Services (“DFPS”) to receive and investigate child abuse claims. Furthermore, you state the information at issue was used by the Dallas Police Department, DFPS, or district police officers, who are commissioned peace officers with the authority to investigate child abuse claims, to investigate such claims. Thus, based on your representations and our review, we find the submitted information was used or developed by these investigating agencies in a child abuse investigation. *See id.* §§ 261.001(1) (defining “abuse” for purposes of Family Code chapter 261), 101.003(a)

(defining “child” for purposes of section 261.201 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”). Therefore, we find the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated any of the investigating entities have adopted rules that govern the release of this type of information in this instance; therefore, we assume no such regulations exist. Given that assumption, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). As our ruling is dispositive, we need not address your remaining argument against disclosure.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 435027

Enc. Submitted documents

c: Requestor
(w/o enclosures)