



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Mr. S. Anthony Safi
Counsel for the El Paso ISD
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
P.O. Box 1977
El Paso, Texas 79999-1977

OR2012-07605

Dear Mr. Safi:

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# 454680 (EPISD ORR #2012.033).

The El Paso Independent School District (the "district"), which you represent, received a request for information pertaining to a specified case number. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 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 in asking this office to decide whether the requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You inform us the district received the request for information on February 27, 2012. You inform our office the district was closed March 10, 2012 through March 18, 2012. We note this office does not count the date the request was received or holidays for the purpose of

calculating a governmental body's deadlines under the Act. Thus, the district's ten-business-day deadline to request a ruling was March 19, 2012. However, your request for a ruling from this office is postmarked March 20, 2012. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, the district failed to comply with the procedural requirements mandated by 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 the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.103 and 552.108 of the Government Code and the common-law informer's privilege are discretionary exceptions to disclosure that protect only a governmental body's interests; thus, the district's claim under section 552.103, section 552.108, and the common-law informer's privilege are not compelling reasons to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 549 at 6 (1990) (purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect third party), 177 (1977) (statutory predecessor to section 552.108 subject to waiver); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Because the district failed to comply with section 552.301, it has waived these discretionary claims. However, the interests under sections 552.103 and 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 at 2-3 (1991), 469 (1987) (university may withhold information under predecessor to Gov't Code § 552.103 to protect district attorney's interest in anticipated criminal litigation). The El Paso County Criminal District Attorney's Office (the "district attorney's office") asserts an interest in the information at issue. Therefore, we will determine whether the district may withhold the submitted information on behalf of the district attorney's office under section 552.103 or section 552.108. Further, because sections 552.101, 552.102, and 552.135 can provide compelling reasons to withhold information, we will also consider the applicability of these exceptions 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 information made confidential by other

statutes. Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the 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.

(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); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). We note the district is not an agency authorized to conduct an investigation under chapter 261. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). However, you state that the information at issue pertains to an investigation of alleged or suspected child abuse by the district’s police department, which is an agency authorized to conduct investigations under chapter 261. Upon review, we find the submitted information is within the scope of section 261.201 of the Family Code. You do not indicate that the district’s police department has adopted a rule that governs the release of this type of information. Therefore, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹

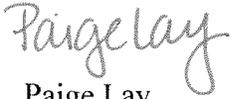
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 454680

Enc. Submitted documents

c: Requestor
(w/o enclosures)