



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2018

Mr. Joshua Smalley
Staff Attorney
Office of the Independent Ombudsman
Texas Juvenile Justice Department
11209 Metric Boulevard, Building H
Austin, Texas 78758

OR2018-00333

Dear Mr. Smalley:

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# 690817 (OIO-ORR-18-002).

The Office of the Independent Ombudsman for the Texas Juvenile Justice Department (the "OIO") received a request for all site visit reports from specified types of facilities after a specified date. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ You also state, and provide documentation showing, you notified one hundred and sixty-five third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We received comments from the Lubbock County Juvenile Probation

¹We note the OIO failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302. Further, because third party interests are at stake in this instance, we will consider the arguments against disclosure of the information at issue.

Department and the Denton County Juvenile Probation Department. We have considered the submitted arguments and reviewed the submitted representative samples of information.

Initially, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2017-00350 (2017), this office ruled the OIO must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.056 of the Human Resources Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the OIO must continue to rely on Open Records Letter No. 2017-00350 as a previous determination and withhold the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exception you raise.

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 261.056 of the Human Resources Code, which provides:

(a) The [Texas Juvenile Justice Department (the “department”)] shall allow any child committed to the department to communicate with the independent ombudsman or an assistant to the ombudsman. The communication:

- (1) may be in person, by mail, or by any other means; and
- (2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

- (1) share with the office of inspector general of the department a communication with a child that may involve the abuse or neglect of the child; and
- (2) disclose its nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation public after the investigation is complete but only if the names of all children, parents, and employees are redacted from the report and remain confidential.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the [OIO], information generated by the [OIO] in the course of an investigation, and confidential records obtained by the [OIO] are confidential and not subject to disclosure under [the Act], except that the information and records, other than confidential information and records concerning a pending law enforcement investigation or criminal action, may be disclosed to the appropriate person if the [OIO] determines that disclosure is:

- (1) in the general public interest;
- (2) necessary to enable the [OIO] to perform the responsibilities provided under this section; or
- (3) necessary to identify, prevent, or treat the abuse or neglect of a child.

Hum. Res. Code § 261.056. You state the submitted information is confidential under section 261.056(d) because it consists of information generated and obtained by the OIO in the course of investigations. We have no indication the release provisions of section 261.056(d) apply to the information at issue. *Id.* § 261.056(d)(1)-(3). Thus, we agree the submitted information is confidential under section 261.056(d) of the Human Resources Code and must be withheld under section 552.101 of the Government Code.²

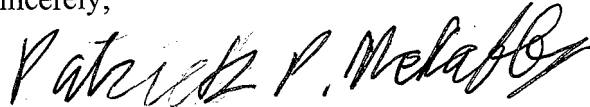
In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the OIO must continue to rely on Open Records Letter No. 2017-00350 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. The OIO must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.056(d) of the Human Resources 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.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 690817

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)