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ATTORNEY GENERAL OF TEXAS

August 25, 2020

Mr. L. Brian Narvaez
Counsel for the Town of Prosper
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2020-21365

Dear Mr. Narvaez:

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# 841422 (ORR# 2019-688-2).

The Town of Prosper (the "town"), which you represent, received a request for all records pertaining to a specified investigation. The town claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception the town claims and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the information submitted as Exhibit B was the subject of previous requests for information from the same requestor, as a result of which this office issued Open Records Letter No. 2019-32378 (2019). In that ruling, we determined the town must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The town informs us there has been no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the town must rely on Open Records Letter No. 2019-32378 as a previous determination and withhold Exhibit B in accordance with that ruling. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note the information submitted as Exhibit B-1 consists of court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[,]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The town seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the town may not withhold Exhibit B-1 under section 552.108. However, because section 552.101 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed documents subject to section 552.022(a)(17). Further, we will address the town’s arguments against disclosure of the remaining 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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.

...

(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). The information submitted as Exhibit B-2 consists of a report of alleged or suspected child abuse or neglect. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this instance, the requestor’s clients are parents of the child victim listed in the information at issue. However, we note the requestor’s clients are alleged to have committed the suspected abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Therefore, the town must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Upon review, however, we find the town has not demonstrated the information submitted as Exhibit B-1 was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, the town has not established Exhibit B-1 is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, the town may not withhold Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, the town must rely on Open Records Letter No. 2019-32378 as a previous determination and withhold Exhibit B in accordance with that ruling. The town must withhold Exhibit B-2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The town must release Exhibit B-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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/rm

¹ As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

Ref: ID# 841422

Enc. Submitted documents

c: Requestor
(w/o enclosures)