



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2017

Ms. Sally Ortiz
Open Records Assistant
City of Plano
P. O. Box 860358
Plano, Texas 75086-0358

OR2017-06007

Dear Ms. Ortiz:

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# 649892 (#TERS122716).

The Plano Police Department (the "department") received a request for all records pertaining to two named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed 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 of the Family Code, which provides, in relevant part, as follows:

(a) [T]he 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:

(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 department asserts the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). Upon review, we find the submitted information is within the scope of section 261.201(a). We note the requestor has provided a signed authorization for release of information from a parent of the child victim listed in the submitted report. However, the parent at issue is alleged to have committed the suspected abuse or neglect in the submitted report. Therefore, we determine the requestor does not have a right of access to the submitted information under section 261.201(k). *See id.* § 261.201(k).

However, section 261.201 provides information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] criminal history record information [(“CHRI”)] that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code, or a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation.” Gov’t Code § 411.1285(a); *see* Fam. Code chs. 203 (governing administration of domestic relations

offices), 107 (governing child custody evaluations). Additionally, section 411.087 of the Government Code provides, in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] [CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Thus, a domestic relations office may only receive CHRI if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, or a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

The requestor states she has been assigned by the 301st Dallas County District Court to complete a social study involving the individuals named in the request. Therefore, if the department determines the submitted information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or to a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation, and if the department determines release of the information is consistent with the Family Code, then the department must make CHRI from the submitted information available to the requestor and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Fam. Code § 107.103 (court ordered child custody evaluation must be performed by individual qualified under Fam. Code § 107.104); *see also id.* § 107.104(b)(3) (individual employed by or under contract with domestic relations office is qualified to conduct child custody evaluation). However, if the department determines the submitted information is not related to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or to a person involved in a child custody evaluation under Chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation, or if the department determines disclosure of the information at issue is not

consistent with the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986); Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

The department also asserts an exception to disclosure under section 552.108 of the Government Code. However, the requestor's statutory right of access prevails over a general exception to disclosure. Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

In summary, if the department determines the submitted information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or to a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation, and if the department determines release of the information is consistent with the Family Code, then the department must make CHRI from the submitted information available to the requestor and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines the submitted information is not related to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or to a person involved in a child custody evaluation under Chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation, or if the department determines disclosure of the information at issue is not consistent with the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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.

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,

A handwritten signature in black ink that reads "Kaelan A. Henze". The signature is written in a cursive style with a large initial "K" and a stylized "H".

Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 649892

Enc. Submitted documents

c: Requestor
(w/o enclosures)