



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2017

Mr. Leonard V. Schneider
Counsel for the City of Huntsville
Lile Parker PLLC
2261 Northpark Drive, Suite 445
Kingwood, Texas 77339

OR2017-27631

Dear Mr. Schneider:

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# 687483.

The Huntsville Police Department (the "department"), which you represent, received a request for all information pertaining to two named individuals, as well as a specified incident report. We understand you to claim the requested information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses section 261.201 of the Family Code, which provides, in relevant part:

(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

¹Based on your arguments, we understand you to raise section 552.1175 of the Government Code.

(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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected 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(4) (defining “neglect” for purposes of chapter 261 of the Family Code). Thus, the submitted information is generally confidential under section 261.201 of the Family Code.

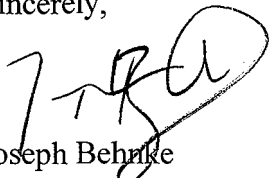
We understand the requestor is an investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) of the Family Code provides “[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare shall be referred immediately to [DFPS].” *See id.* § 261.105(a). In this instance, the submitted information reflects the individuals suspected of child neglect were responsible for the children’s care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child’s care, custody, or welfare includes a member of the child’s family or household as defined by chapter 71 of the Family Code); *see also id.* § 71.005 (household is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply in this instance. *See* Attorney General Opinion No. GA-0879 (2011) (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child’s care, custody, or welfare to DFPS). Therefore, the department may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and section 552.1175 of the Government Code for the information at issue, a specific statutory right of access prevails over general exceptions to disclosure in the Act and the common law. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the department may not withhold any portion of the submitted information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.1175 of the Government Code. As

you raise no further exceptions to disclosure, the department must release the submitted information.²

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,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 687483

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.105(a). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.