



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2019

Ms. Michelle Buendia
Assistant City Attorney
City of Dallas
1400 South Lamar, 6 Floor 6W
Dallas, Texas 75215

OR2019-03891

Dear Ms. Buendia:

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# 749792 (ORR# D029499-111218).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, the department failed to comply with section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). 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 there is 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

S.W.3d 379, 381 (Tex. App.–Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because you inform us, and provide documentation showing, the Dallas County District Attorney’s Office (the “district attorney’s office”) objects to the release of the information at issue, we will consider whether the department may withhold the information at issue under section 552.108 of the Government Code on behalf of the district attorney’s office. Additionally, you raise sections 552.101, 552.130, and 552.136 for the submitted information. Because these exceptions can provide compelling reasons to overcome the presumption of openness, we will also consider your arguments under these sections for the submitted information.

Next, we note the requestor, a representative of the Texas Department of State Health Services (“DSHS”) Maternal Mortality and Morbidity Task Force (the “task force”), asserts she has a right of access to the requested information under section 34.008 of the Health and Safety Code. The task force is a multidisciplinary advisory committee administered by DSHS that studies and reviews information related to cases of pregnancy-related deaths and severe maternal morbidity. *See* Health & Safety Code §§ 34.002(a)-(b), .005. Pursuant to section 34.007, DSHS determines a statistically significant number of pregnancy-related death cases and randomly selects such cases for review by the task force, and analyzes aggregate data of severe maternal morbidity to identify trends and, if feasible, selects severe maternal morbidity cases for review. *See id.* § 34.007. Section 34.008 provides, in relevant part, the following:

(a) On selecting a case of pregnancy-related death or severe maternal morbidity for review, [DSHS] shall, in accordance with this section, obtain information relevant to the case to enable the task force to review the case. [DSHS] shall provide the information to the task force.

...

(c) On the request of [DSHS], a hospital, birthing center, or other custodian of the requested information shall provide the information to [DSHS]. The information shall be provided without the authorization of the patient or, if the patient is deceased, without the authorization of the patient’s family.

Id. § 34.008(a), (c). Thus, DSHS has a right of access to information pertaining to cases of pregnancy-related death or severe maternal morbidity. Section 34.001 of the Health and Safety Code provides, in relevant part, the following:

(8) “Maternal morbidity” means a pregnancy-related health condition occurring during pregnancy, labor, or delivery or within one year of delivery or end of pregnancy.

...

(12) “Pregnancy-related death” means the death of a woman while pregnant or within one year of delivery or end of pregnancy, regardless of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

(13) “Severe maternal morbidity” means maternal morbidity that constitutes a life-threatening condition.

Id. § 34.001(8), (12), (13). Upon review, we find DSHS has failed to demonstrate, and we are unable to determine, the submitted information is relevant to a case of pregnancy-related death or severe maternal morbidity. Consequently, we conclude the requestor has not established a right of access to the submitted information pursuant to section 34.008 of the Health and Safety Code. Therefore, we will address the arguments of the department to withhold the information at issue.

Section 552.101 of the Government Code exempts from public 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 section 261.201 of the Family Code, which provides, in 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.

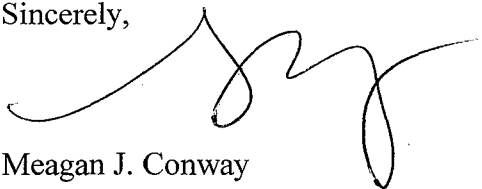
Fam. Code § 261.201(a). You state the submitted information relates to an investigation of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married 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 section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/mo

Ref: ID# 749792

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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