



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2019

Ms. Kia Weathersby
Deputy City Clerk
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2019-08833

Dear Ms. Weathersby:

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# 757358 (City ID# 75).

The Wichita Falls Police Department (the "department") received a request for all records related to two named individuals at four specified addresses during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts 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). The submitted information was used or developed in 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 chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services (“DFPS”) in accordance with chapter 42 of the Human Resources Code. Further, the requestor states residents of the specified addresses are prospective foster parents. *See generally* Hum. Res. Code ch. 42. Pursuant to rules promulgated by DFPS under chapter 42 of the Human Resources Code, child-placing agencies are required to complete a foster home screening prior to verifying a foster home. *See id.* § 42.042(a), (e), (f)-(g) (DFPS shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies, child-care services, licensed child-care facilities, and registered family homes). As part of the screening, the agency must obtain certain information as set forth at section 749.2447 of title 26 of the Texas Administrative Code. 26 T.A.C. §§ 749.2445(c)(1), .2471(1); *cf.* Hum. Res. Code § 26.0561 (providing in part “[b]efore . . . a child-placing agency may issue a verification certificate for an agency foster home, the . . . child-placing agency must obtain information relating to each family violence report at the applicant’s residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.”). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information about a prospective foster home:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.]

(B) With respect to law enforcement service call information, [the child-placing agency] *must do the following:*

(i) Obtain service call information from the appropriate law enforcement agency for the prospective foster parents' addresses for the past two years. Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

...

(iii) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

26 T.A.C. § 749.2447(7)(B)(i), (iii) (emphasis added); *see id.* § 749.2445(a); *see id.* §§ 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, section 749.2447(7) of title 26 of the Texas Administrative Code requires a child-placing agency to obtain all service call information for a two-year period for service calls to the addresses of prospective foster parents from appropriate law enforcement agencies. *See id.* § 749.2447(7). Accordingly, we find a child-placing agency licensed by DFPS under chapter 26 of the Human Resources Code has a right of access to certain information under section 749.2447(7) when it is obtained for the purpose of verifying a prospective foster home pursuant to the requirements of section 749.2445.

In this instance, the requestor is seeking all records related to two named individuals and specified addresses. Further, the requestor indicates she seeks the submitted information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. However, we note the incident at issue in the submitted documents falls outside the two year period to which 749.2447(7) of title 26 of the Texas Administrative Code grants access. *See id.* § 749.2447(7)(A), (C). Accordingly, we conclude the requestor does not have a right of access to the submitted information under section 749.2447(7) of title 26 of the Texas Administrative Code. Thus, 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.

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, appearing to read "Emily Buchanan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Emily Buchanan
Attorney
Open Records Division

EB/jxd

Ref: ID# 757358

Enc. Submitted documents

c: Requestor
(w/o enclosures)