



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 24, 2019

Ms. Teresa J. Brown  
Senior Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2019-10889

Dear Ms. Brown:

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# 761628 (ORR# ROBJ021119).

The Plano Police Department (the "department") received a request for all information pertaining to a named individual. 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 other statutes, such as section 261.201 of the Family Code, which provides in part:

(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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse by the department under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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). Accordingly, we find this information is subject to section 261.201 of the Family Code. As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the requestor is an investigator with the civil division of the Special Prosecution Unit of the State of Texas, and he indicates his office is seeking the information at issue pursuant to chapter 841 of the Health and Safety Code, which relates to the civil commitment of sexually violent predators. Section 841.142 of the Health and Safety Code provides in pertinent part:

(a) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under [chapter 841].

...

(e) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person’s consent is not required for release or exchange of information under this section.

Health & Safety Code § 841.142(a), (e). Upon notice and recommendation of the multi-disciplinary review team, the Texas Department of Criminal Justice shall assess whether an individual suffers from a behavioral abnormality making the individual likely to engage in a predatory act of sexual violence and provide notice of the assessment to the attorney representing the state in the county where the individual was convicted of the

sexually violent offense. *See id.* §§ 841.023, .022(c), .002(1) (defining “attorney representing the state”). The attorney representing the state may file a petition alleging the individual is a sexually violent predator. *See id.* § 841.041(a). Section 841.042 of the Health and Safety Code provides “the special prosecution unit shall provide legal, financial, and technical assistance to the attorney for a civil commitment proceeding conducted under [chapter 841].” *Id.* § 841.042. Thus, the civil division of the special prosecution unit is an entity charged with assisting the attorney representing the state in making an assessment or determination under chapter 841 of the Health and Safety Code. We understand an attorney representing the state in a proceeding being conducted under chapter 841 has requested the assistance from the special prosecution unit. The requestor indicates the special prosecution unit seeks the civil commitment of a sexually violent predator, and he is assigned to a case involving the named individual. Therefore, the requestor has a right of access to the submitted information pursuant to section 841.142 of the Health and Safety Code.

Although the submitted information is confidential under section 261.201 of the Family Code, section 841.142 of the Health and Safety Code provides the requestor with a right of access to the submitted information, regardless of whether the information is otherwise confidential. We note section 841.142 was enacted after section 261.201. Act of May 31, 1999, 76th Leg., R.S., ch. 1188, § 4.01, 1999 Tex. Gen. Laws 4143, 4150-51 (codified as Health & Safety Code § 841.142); Act of April 10, 1995, 74th Leg., R.S., ch. 20, § 1, 1995 Tex. Gen. Laws 113, 262 (codified as Fam. Code § 261.201). When the legislature enacts a statute, it is presumed to do so “with complete knowledge of the existing law and with reference to it.” *Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 301 (Tex. 1990); *CenterPoint Energy Houston Elec., LLC v. Gulf Coast Coalition of Cities*, 263 S.W.3d 448, 461 (Tex. App.—Austin 2008), *aff’d sub nom. Texas Indus. Energy Consumers v. CenterPoint Energy Houston Elec., LLC*, 342 S.W.3d 95 (Tex. 2009). We also note a statutory right of access prevails over the common law. *See 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). Thus, we conclude the submitted information must be released to this requestor under section 841.142 of the Health and Safety Code.<sup>1</sup>

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/>

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<sup>1</sup>As noted, the requestor has a special right of access, beyond that of the general public, to any information being released in this instance. Therefore, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.

[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 'Meagan J. Conway', with a long horizontal flourish extending to the right.

Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MC/gw

Ref: ID# 761628

Enc: Submitted documents

c: Requestor  
(w/o enclosures)