



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 6, 2019

Mr. L. Brian Narvaez
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-21581

Dear Mr. Narvaez:

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# 778932 (McKinney ID# P011554).

The McKinney Police Department (the "department"), which you represent, received a request for records related to three named individuals. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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.

Fam. Code § 261.201(a). The department asserts the submitted information was used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we find the information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, the submitted information is generally confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor asserts he has a right of access to the submitted information under section 107.1111 of the Family Code. Section 261.201 provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code. § 261.201(a). Section 107.1111 constitutes “applicable state law” in this instance. Section 107.1111(a) reads as follows:

(a) Notwithstanding any other state law regarding confidentiality, a child custody evaluator appointed by a court is entitled to obtain records that relate to any person residing in a residence subject to a child custody evaluation from:

- (1) a local law enforcement authority;
- (2) a criminal justice agency;
- (3) a juvenile justice agency;
- (4) a community supervision and corrections department created under Chapter 76, Government Code; or
- (5) any other governmental entity.

Id. § 107.1111(a). A “child custody evaluator” means “an individual who conducts a child custody evaluation under [subchapter D of chapter 107 of the Family Code]” and “includes a private child custody evaluator.” *Id.* § 107.101(2) (defining “child custody evaluator”). The requestor states he is a child custody evaluator and was appointed by a court to complete an evaluation regarding the family of the named individuals. The requestor seeks information related to the named individuals. Accordingly, if the submitted information relates to a person residing in a residence subject to the child custody evaluation, then the

requestor has a right of access to the information in its entirety under section 107.1111 of the Family Code and the department must release the information to him.¹ However, if the submitted information does not relate to a person residing in a residence subject to a child custody evaluation, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/mo

Ref: ID# 778932

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note section 107.1111(d) of the Family Code prohibits redisclosure of information obtained under section 107.1111(a). See Fam. Code § 107.1111(d) (person commits offense if person recklessly discloses confidential information obtained under Subsection (a) in violation of this section; offense is a Class A misdemeanor). Thus, if the requestor has a right of access to Exhibit C under section 107.111 and the department receives another request for this information from a different requestor, then the department must again seek a ruling from this office. See Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).