



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 6, 2019

Mr. Robert Carroll
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2019-31297

Dear Mr. Carroll:

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# 797907 (ORR# P001080).

The City of Odessa (the "city") received a request for specified arrest reports.¹ The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception the city claims 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 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 As the city has not submitted a copy of the request for information, we take our description from the city's brief.

² We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because the exception the city claims can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

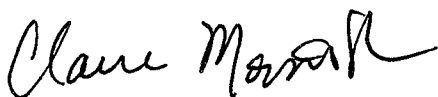
- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation 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 investigations of alleged or suspected child abuse or neglect conducted by the city's police department (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 city does not indicate the department 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 city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

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³ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information. We understand 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. However, the requestor does not have a special right of access to the information because the incidents at issue did not occur within the past two years. *See* 26 T.A.C. § 749.2447(7)(B)(i), (iii); *see id.* § 749.2445(a); *see* 40 TAC § 745.21(8) (defining "child-placing agency").

Ref: ID# 797907

c: Requestor