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ATTORNEY GENERAL OF TEXAS

November 15, 2019

Mr. Jim Kachelmeyer  
Assistant City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2019-32363

Dear Mr. Kachelmeyer:

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# 797017 (ORR# G008512).

The City of Georgetown (the "city") received a request for information pertaining to a specified incident. The city claims either it is not required to comply with the request pursuant to section 552.028 of the Government Code, or the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.028(a) of the Government Code provides the following:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

Gov't Code § 552.028(a), (c). The city states the requestor is an agent of an incarcerated individual. *See id.* § 552.028(c). However, we find the city has not established the requestor is requesting information on behalf of the incarcerated individual at issue. Thus, we find the city has failed to demonstrate the request for information was submitted by an agent of an individual who is imprisoned or confined in a correctional facility. Accordingly, we conclude section 552.028 of the Government Code does not permit the city to decline to comply with this request.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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.

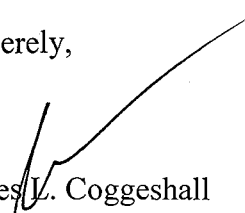
Fam. Code § 261.201(a). The city asserts the submitted information was used or developed in an investigation by the city's police department (the “department”) under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” 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 city does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/gw

Ref: ID# 797017

Enc. Submitted documents

c: Requestor  
(w/o enclosures)