



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 22, 2019

Mr. Evan D. Reed  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2019-33043

Dear Mr. Reed:

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# 798153 (Ref. Nos. W063675-083019 and W063677-083019).

The City of El Paso (the "city") received two requests from the same requestor for information pertaining to a particular case, as well as information pertaining to a named individual at a particular location during a specified period of a time. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note the information related to case number 17-297249 is not responsive to the present request because it is outside the time range specified by the requestor. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

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<sup>1</sup> Although you also raise section 552.101 of the Government Code in conjunction with constitutional privacy for the submitted information; you provide no arguments explaining how this doctrine is applicable to the information at issue. Therefore, we assume you no longer assert this doctrine. See Gov't Code §§ 552.301, .302.

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. Section 261.201(a) provides, in part, as follows:

(a) [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). Upon review, we find the responsive information relates to investigations of alleged or suspected child abuse or neglect conducted by the city’s police department. *See id.* § 261.001 (1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the responsive information is confidential pursuant to section 261.201(a) of the Family Code, and the city must generally withhold this information under section 552.101 of the Government Code on that basis. *See id.* § 261.201(a).

We note, however, the requestor is a representative of the El Paso County Public Defender’s Office (the “public defender’s office”). Section 261.201(a) provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender’s office are entitled to obtain from the [Department of Public Safety (“DPS”)] criminal history record information maintained [(“CHRI”)] by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov't Code § 411.1272. "Public defender's office" has the meaning assigned by article 26.044(a) of the Code of Criminal Procedure. *Id.* § 411.082(6); *see also* Crim. Proc. Code art. 26.044(a)(4). In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state CHRI maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Upon review, we find the responsive information contains CHRI. Accordingly, the requestor is authorized to obtain the CHRI in the information at issue from the city pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender's office is appointed and if release of the information is consistent with the Family Code. *See id.* §§ 411.087(a)(2), .1272; *see also* Fam. Code § 261.201(a). However, this office cannot determine whether the release of the information is consistent with the Family Code or whether the information relates to a criminal case in which an attorney compensated by the public defender's office is appointed. Therefore, if the city determines release of the CHRI is not consistent with the Family Code or does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines release of the CHRI is consistent with the Family Code and relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city must release CHRI from the responsive information. In this instance, the city must withhold the remaining responsive 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 <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,

A handwritten signature in black ink, appearing to read "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/rm

Ref: ID# 798153

Enc. Submitted documents

c: Requestor  
(w/o enclosures)