



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 14, 2020

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

OR2020-01274

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# 806326 (ORR# P012944).

The City of McKinney (the "city"), which you represent, received a request for records related to a specified incident involving a named individual. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims 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 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) 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 an investigation 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 generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute); *see* Fam. Code § 261.201(b)-(g), (i), (k) (listing circumstances under which section 261.201 information can be released); Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

However, 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). In this instance, the requestor is a representative of the Texas Health and Human Services Commission (the "commission") and states the commission was appointed as Permanent Successor Guardian of an individual who is the adult suspect listed in the information at issue.<sup>1</sup> The requestor contends the commission has a right of access to the submitted information pursuant to section 161.109 of the Human Resources Code. Thus, we understand the requestor to argue section 161.109 of the Human Resources Code constitutes "applicable state law" in this instance. Section 161.109 provides, in relevant part:

(a) The department shall have access to all of the records and documents concerning an individual who is referred for guardianship services or to whom guardianship services are provided under this subchapter that are necessary to the performance of the department's duties under this subchapter, including:

- (1) client-identifying information; and
- (2) medical, psychological, educational, financial, and residential information.

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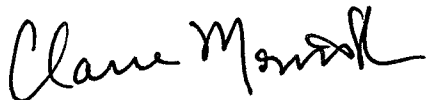
<sup>1</sup> The guardianship services provided by the Texas Department of Aging and Disability Services (the "department") have been consolidated into the commission. *See* Gov't Code § 531.0011, 531.02012.

Hum. Res. Code § 161.109(a). Thus, section 161.109(a) gives the commission access to information concerning the individual, including medical, psychological, educational, financial, and residential information related to the individual, that are necessary to the performance of the commission's duties. However, as noted above, release of the information must be for purposes consistent with the Family Code. This office is not able to determine whether the release of the submitted information is for purposes consistent with the Family Code. Further, the requestor does not state, and we are not able to determine, the submitted information is necessary to the performance of the commission's duties. Accordingly, we must rule in the alternative. If the city determines the release of the submitted information is for purposes consistent with the Family Code and is necessary to the performance of the commission's duties, then the city must release the submitted information to this requestor pursuant to section 161.109 of the Human Resources Code. Although the city also asserts section 552.108 to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor's statutory access under section 161.109(a) prevails and the city may not withhold the information under section 552.108 of the Government Code. However, if the city determines release of the information is not for purposes consistent with the Family Code or such release is not necessary to the performance of the commission's duties, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/mo

Ref: ID# 806326

Enc. Submitted documents

c: Requestor  
(w/o enclosures)