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ATTORNEY GENERAL OF TEXAS

March 30, 2020

Ms. Cynthia Trevino
Counsel for the City of La Vernia
Denton Navarro Rocha Bernal & Zech, P.C.
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2020-09665

Dear Ms. Trevino:

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# 819750 (PIA-20-009).

The City of La Vernia (the "city"), which you represent, received a request for information pertaining to a named former La Vernia Independent School District employee regarding specified allegations. You state the city will rely on Open Records Letter No. 2019-35921 (2019) and withhold some of the requested information in accordance with that ruling.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes grand jury subpoenas and summonses and information obtained through grand jury subpoenas and summonses. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decision Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury

¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the city holds the grand jury subpoenas and summonses, and information obtained through grand jury subpoenas and summonses, solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to release that information in response to the instant request.² To the extent the city holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your arguments against its disclosure.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by section 261.201 of the Family Code, which provides, in relevant 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201 as a 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). As you do not indicate the city has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction

² In this instance, as our ruling is dispositive, we need not address your arguments against disclosure of this information.

with section 261.201(a) of the Family Code.³ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, to the extent the city holds the grand jury subpoenas and summonses, and information obtained through grand jury subpoenas and summonses, solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to release that information in response to the instant request. To the extent the city holds the information at issue in its own capacity and not solely as an agent of the grand jury, the city must withhold the submitted information in its entirety 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,

Kimbell Kesling
Attorney
Open Records Division

KK/mo

Ref: ID# 819750

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.