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ATTORNEY GENERAL OF TEXAS

June 1, 2015

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2015-10599

Dear Ms. Pemberton:

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# 565385 (City ID #W015713).

The Killeen Police Department (the "department") received a request for all records relating to a specified category of offense involving two named individuals at a specified address. 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.

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. Section 261.201 of the Family Code 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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). Thus, the submitted information is generally confidential under section 261.201(a) of the Family Code.

However, the submitted information indicates 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, and the individuals whose information she requested are current or prospective foster parents. *See generally* Hum. Res. Code ch. 42. Section 261.201 of the Family Code 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). Section 749.2447(7) of title 40 of the Texas Administrative Code constitutes such “applicable state law.”

A child-placing agency must complete a foster home screening prior to verifying a foster home. *See* 40 T.A.C. § 749.2445(a); Hum. Res. Code § 42.042(a), (h)-(h-1) (DFPS shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies). Further, child-placing agencies are required to evaluate a foster home for compliance with licensing rules in certain instances. *See* 40 T.A.C. § 749.2801. As part of the screening or evaluation, the agency must obtain certain information as set forth at section 749.2447. 40 T.A.C. §§ 749.2445(c)(1), .2471(1); *cf.* Hum. Res. Code § 42.0561 (providing in part that “[b]efore . . . a child-placing agency may issue a verification certificate for an agency foster home, the . . . child-placing agency must obtain information relating to each family violence report at the applicant’s residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.”). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following:*

(A) Obtain service call information from the appropriate law enforcement agency for the prospective foster parents' addresses for the past two years. Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

...

(C) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

40 T.A.C. § 749.2447(7)(A), (C) (emphasis added); *see id.* §§ 749.2445(a), (c)(1), .2471(1); *see also id.* §§ 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, section 749.2447(7) of title 40 of the Texas Administrative Code requires a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of current or prospective foster parents from appropriate law enforcement agencies. *See id.* § 749.2447(7)(A), (C). Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a current or prospective foster home pursuant to the requirements of section 749.2445 or section 749.2471.

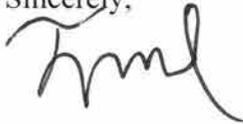
In this instance, the requestor is seeking reports involving current or prospective foster parents at their residence for the previous two years. Accordingly, we conclude the requestor has a right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. However, as noted above, section 261.201(a) states any release must be “for purposes consistent with the Family Code.” *See Fam. Code* § 261.201(a). We find release of the information at issue to this requestor is for a purpose consistent with the Family Code. Therefore, pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code, the department may not withhold this information under section 552.101 in conjunction with section 261.201. Although you seek to withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act and the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *see also* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general

exceptions to disclosure under the Act). Therefore, the department may not withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code. As you raise no further exceptions to disclosure, the department must release the submitted information.¹

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 565385

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because this requestor has a special right of access to the information being released, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office. See 40 T.A.C. § 749.2447(7)(A), (C).