



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2015

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2015-26693

Dear Mr. Gates:

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# 591669 (Midland ID# 17823).

The City of Midland (the "city") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides 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 [the Family 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 report consists of information used or developed by the city's police department (the "department") in an investigation under chapter 261; therefore, the submitted information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261); *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). Thus, the submitted report is generally confidential under section 261.201 of the Family Code. However, we note the requestor is a representative of the Midland Memorial Hospital Child Fatality Review Team (the "review team"). The requestor argues she has a right of access to the submitted information under section 264.509 of the Family Code. Section 261.201(a) provides that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law[.]" *Id.* § 261.201(a). In this instance, section 264.509 of the Family Code may constitute "applicable state law" for purposes of section 261.201(a).

As noted above, the requestor is a representative of the review team. Subchapter F of chapter 264 of the Family Code relates to child fatality review and investigation. *See id.* §§ 264.501 *et seq.* The purpose and duties of a child fatality review team include "decreas[ing] the incidence of preventable child deaths by . . . developing an understanding of the causes and incidence of child deaths in the county or counties in which the review team is located[.]" *Id.* § 264.506(a)(3). A child fatality review team is required to "meet on a regular basis to review child fatality cases and recommend methods to improve coordination of services and investigations between agencies that are represented on the team[.]" *Id.* § 264.506(b)(2). Furthermore, section 264.508 provides "[t]he review team of the county in which the injury, illness, or event that was the cause of the death of the child occurred, as stated on the child's death certificate, shall review the death." *Id.* § 264.508(a). Section 264.509 provides in relevant part:

(a) A review team may request information and records regarding a deceased child as necessary to carry out the review team's purpose and duties. Records and information that may be requested under this section include:

(1) medical, dental, and mental health care information; and

(2) information and records maintained by any state or local government agency, including:

(A) a birth certificate;

(B) law enforcement investigative data;

(C) medical examiner investigative data;

(D) juvenile court records;

(E) parole and probation information and records; and

(F) child protective services information and records.

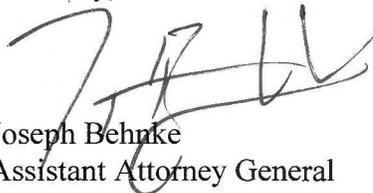
(b) On request of the presiding officer of a review team, the custodian of the relevant information and records relating to a deceased child shall provide those records to the review team at no cost to the review team.

Id. § 264.509(a), (b). The submitted information consists of law enforcement investigative data relating to the investigation of the death of a child by the department. Section 264.509(a) provides that a child fatality review team shall have access to law enforcement investigative data and records as necessary to conduct its duties. Section 264.509(b) states, upon request of the presiding officer of the review team, the custodian of the “relevant information and records” shall provide the records to the review team. The requestor is the presiding officer of the review team, accordingly, she has a right of access to the submitted information under section 264.509(b) of the Family Code, which constitutes “applicable state law” for purposes of section 261.201(a). Therefore, the city must release the report to this requestor pursuant to section 264.509 of the Family Code.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,



Joseph Behnke
Assistant Attorney General
Open Records Division

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¹We note, because the requestor has a right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 591669

Enc. Submitted documents

c: Requestor
(w/o enclosures)