



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2016

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2016-00285

Dear Ms. Brown:

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# 593147 (Plano Tracking No. RUTE100615).

The Plano Police Department (the "department") received a request for all records related to any of four named individuals or two specified addresses over a specified time period. You state you have released some information to the requestor. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(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.

(b) A court may order the disclosure of information that is confidential under this section if:

(1) a motion has been filed with the court requesting the release of the information;

(2) a notice of hearing has been served on the investigating agency and all other interested parties; and

(3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child.

...

(c) In addition to Subsection (b), a court, on its own motion, may order disclosure of information that is confidential under this section if:

(1) the order is rendered at a hearing for which all parties have been given notice;

(2) the court finds that disclosure of the information is:

(A) essential to the administration of justice; and

(B) not likely to endanger the life or safety of:

(i) a child who is the subject of the report of alleged or suspected abuse or neglect;

(ii) a person who makes a report of alleged or suspected abuse or neglect; or

(iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child; and

(3) the order is reduced to writing or made on the record in open court.

Fam. Code § 261.201(a), (b), (c). Upon review, we find the submitted information was used or developed in an investigation of alleged child abuse. *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 the incident report is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the submitted incident report is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the department received the request for information from a representative of Court Appointed Special Advocates of Denton County (“CASA”). The requestor included with her request a court order showing the requestor has been appointed the guardian ad litem of the child who is the subject of the submitted incident report. The court order further states that “[u]pon presentation of this order to any agency, . . . [CASA] is hereby authorized to inspect and copy any records pertaining to any protected information concerning the [child.]” Sections 261.201(b) and (c) provide that information made confidential by section 261.201(a) must be released pursuant to a court order if certain requirements are met. *See* Fam. Code § 261.201(b), (c). In this instance, we are unable to determine whether or not the requestor’s court order complies with the requirements of either section 261.201(b) or section 261.201(c). Thus, if the department determines the court order complies with section 261.201(b) or section 261.201(c), the department may not withhold the submitted

incident report under section 261.201(a).¹ Although the department seeks to withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy, a specific statutory right of access overcomes 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). However, if the department determines the court order does not comply with section 261.201(b) or section 261.201(c), then the department must withhold the submitted 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 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

JB/som

Ref: ID# 593147

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note, if the department determines the court order complies with either section 261.201(b) or 261.201(c), the information to be released is generally confidential with respect to the general public. Thus, if the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.