



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2016

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2016-08493

Dear Ms. Clarke:

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# 606043.

The Lubbock County Medical Examiner's Office (the "medical examiner's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). We note the medical examiner's office is not an agency authorized to conduct an investigation under chapter 261. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the submitted information pertains to an investigation of alleged or suspected child abuse conducted by the Lubbock County Criminal District Attorney's Office. We note this agency is authorized to conduct investigations under chapter 261. Thus, we conclude the information falls within the scope of section 261.201 of the Family Code. *See also id.* §§ 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code), 261.001(1) (defining "abuse" for purposes of this section). Therefore, we determine the information at issue is generally confidential pursuant to section 261.201 of the Family Code. However, section 261.201(a) provides information encompassed by that section may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law[.]" *Id.* § 261.201(a). Section 264.509(b) of the Family Code constitutes applicable state law for purposes of section 261.201(a); thus, we address it.

The requestor states she is requesting the submitted report on behalf of the South Plains Child Fatality 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.

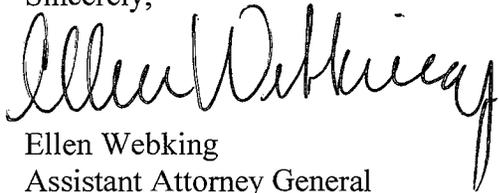
Id. § 264.509(a), (b). The submitted information consists of medical examiner investigative data relating to the investigation of the death of a child. Section 264.509(a) provides that a child fatality review team shall have access to medical examiner investigative data as necessary to conduct its duties. Section 264.509(b) states that, 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 child fatality review team; accordingly, she has a right of access to the submitted information under section 264.509(b) of the Family Code. Furthermore, we find the release of the submitted information in this instance is consistent with the Family Code for the purposes of section 261.201(a) of the Family Code. *See id.* § 261.201(a). Although the medical examiner’s office seeks to withhold the submitted information under section 552.108 of the Government Code, we note exceptions in the Act cannot impinge on a statutory right of access to information. *See Open Records Decision Nos. 613 at 4 (1993); see also Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).* Consequently, the medical examiner’s office may not withhold the submitted information from this requestor under section 552.108 of the Government Code. Accordingly, the medical examiner’s office must release the submitted information to this requestor pursuant to section 264.509(b) of the Family Code.²

²We note, because the requestor has a right of access to the information being released, the medical examiner’s office must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/

Ref: ID# 606043

Enc. Submitted documents

c: Requestor
(w/o enclosures)