



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 6, 2013

Mr. Marcus W. Norris  
City Attorney  
Legal Department  
City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79105-1971

OR2013-15565

Dear Mr. Norris:

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# 497096.

The City of Amarillo (the "city") received a request from the Texas Department of Family and Protective Services ("DFPS") for the address of a named participant in the Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"). You raise no exceptions against disclosure of this information, but rather seek to release it to this requestor. We have received comments from the Texas Department of State Health Services (the "department"). *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have submitted information that does not consist of the address of the named individual. As the request is only for the named individual's address, the remaining submitted information is not responsive to the instant request for information. This ruling does not address the public availability of nonresponsive information, and the city is not required to release nonresponsive information in response to this request.

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 has been found by this office to encompass information made confidential by federal regulations. *See Rainbow Group, Ltd. v. Tex. Employment Comm'n*, 897 S.W.2d 946 (Tex. App.—Austin 1995, writ denied) (court approves office of attorney general finding to withhold, under section 552.101, unemployment compensation identification numbers as made confidential by federal regulations); *see also* Open Records Decisions Nos. 599 (1990), 373 (1983). The WIC program is regulated by Title 7 of the Code of Federal Regulations. The department claims the responsive information is confidential pursuant to section 246.26(d) of title 7 of the Code of Federal Regulations, which pertains to the confidentiality of applicant and participant information. The relevant provision states:

(i) Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.

(ii) Except as otherwise permitted by this section, the State agency must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom the State agency determine have a need to know the information for WIC Program purposes. These persons may include, but are not limited to: personnel from its local agencies and other WIC State or local agencies; persons under contract with the State agency to perform research regarding the WIC Program, and persons investigating or prosecuting WIC Program violations under Federal, State or local law.

7 C.F.R. § 246.26(d)(1). The information at issue consists of a WIC participant's address. Therefore, the responsive information is confidential pursuant to section 246.26(d)(1) of title 7 of the Code of Federal Regulations. Although, the city argues the release provisions in subsections 246.26(d)(2)(ii) and 246.26(d)(3) apply in this situation, the department states, and provides correspondence from an attorney with the United States Department of Agriculture ("USDA"), which is the agency that administers the WIC program, confirming, that none of the release provisions are applicable in this instance and that disclosure of the responsive information at issue is prohibited by section 246.26(d). *See generally id.* §§ 246.26(d)(2)(ii), .26(d)(3). Therefore, the responsive information is generally confidential pursuant to section 246.26(d)(1) of title 7 of the Code of Federal Regulations and must be withheld under section 552.101 of the Government Code.

As noted above, the requestor is an investigator with DFPS. The requestor indicates she is seeking the responsive information in connection with her investigation into alleged child abuse and neglect under section 261.301 of the Family Code. *See* Fam. Code § 261.301(a). Section 261.303 provides, in relevant part:

(e) A person, including a utility company, that has confidential locating or identifying information regarding a family that is the subject of an investigation under this chapter shall release that information to [DFPS] on request. The release of information to [DFPS] as required by this subsection by a person, including a utility company, is not subject to Section 552.352, Government Code, or any other law providing liability for the release of confidential information.

*Id.* § 261.303(e). You argue the responsive information is confidential locating or identifying information pertaining to a family that is the subject of an investigation under section 261.301 and must be released to the requestor pursuant to section 261.303 of the Family Code. We find this creates a conflict between the confidentiality provided for by section 246.26(d)(1) of title 7 of the Code of Federal Regulations and the requestor's right of access pursuant to section 261.303 of the Family Code. However, we note, section 246.26(d)(1) of title 7 of the Code of Federal Regulations, as federal law, preempts any conflicting state provisions. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law). Accordingly, we find the responsive information must be withheld under section 552.101 of the Government Code in conjunction with section 246.26(d)(1) of title 7 of the Code of Federal Regulations.

The city also asserts the requested information can be provided to the requestor through an intergovernmental transfer. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. In adherence to this policy, this office has concluded information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655, 414 (1984). However, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995)

(intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body).

Section 246.26(d) of title 7 of the Code of Federal Regulations has its own release provisions. Therefore, we conclude the responsive information may not be provided to the requestor through an intergovernmental transfer; it may be released only in accordance with the release provisions of section 246.26 of the title 7 of the Code of Federal Regulations. As the department and an attorney with the USDA inform us that none of the release provisions of section 246.26 of title 7 of the Code of Federal Regulations are applicable, we find the responsive information must be withheld under section 552.101 of the Government Code in conjunction with section 246.26(d)(1) of title 7 of the Code of Federal Regulations.

Finally, the city asks this office to issue a previous determination allowing the city to release WIC information for investigations of child abuse, neglect, or other crimes without the necessity of requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). Having considered your request, we decline to issue such a previous determination at this time. Accordingly, 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](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 497096

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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