



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 22, 2016

Ms. Susan E. Tennyson
Open Records Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2016-18910

Dear Ms. Tennyson:

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# 623472 (DFPS ORR No. 04212016BWO).

The Texas Department of Family and Protective Services (the "department") received a request for all complaints and requests for a review related to child and protective services received by the department's office of consumer affairs during a specified time period.¹ 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 representative sample of information.²

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

(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). You state the information you marked was created and maintained as part of department investigations of abuse or neglect or in providing services as a result of an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code chapter 261), .301; *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201). In accordance with section 40.005 of the Human Resource Code, you inform us the department promulgated section 700.203 of title 40 of the Texas Administrative Code, which permits the department to disclose information made confidential under section 261.201(a) under certain circumstances. *See Hum. Res. Code* § 40.005; 40 T.A.C. § 700.203. You state, and we agree, the requestor failed to demonstrate any right of access under this rule to the information at issue. Therefore, we conclude the information you marked is confidential under section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute)*. Accordingly, the department must withhold the information you marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ The remaining information must be released.

³As our ruling on this issue is dispositive, we do not address your additional arguments to withhold this information. We note Open Records Letter No. 2003-05590 (2003) is a previous determination authorizing the department to withhold, under section 552.101 of the Government Code in conjunction with section 261.201 (a) of the Family Code, the records concerning an investigation of an allegation of abuse or neglect of a child and the records used or developed in providing services as a result of such an investigation, unless the department’s rules permit the department to release the requested records to a particular 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 623472

Enc. Submitted documents

c: Requestor
(w/o enclosures)