



September 17, 2002

Mr. Darrell G-M Noga
Cooper & Scully
900 Jackson Street, Suite 100
Dallas, Texas 75202

OR2002-5228

Dear Mr. Noga:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 168697.

The Coppell Police Department (the “department”), which you represent, received a request for a copy of the arrest report and any other relevant documents pertaining to a specified incident. You assert that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 261.201(a) of the Family Code provides as follows:

(a) The 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the submitted information relates to an allegation of child abuse, the information is generally confidential under section 261.201 of the Family Code. In this instance, however, we believe that the requestor has a right of access to some of the information at issue and that such release would be for a purpose consistent with state law under section 261.201 of the Family Code.

Section 153.006(a) of the Occupations Code provides that “[t]he [Board of Medical Examiners] may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant.” Additionally, section 411.099 of the Government Code specifically grants a right of access for the State Board of Medical Examiners (the “SBME”) to obtain criminal history record information (“CHRI”) from the Department of Public Safety (“DPS”). Section 411.099 provides that

The Texas State Board of Medical Examiners is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a license under Subtitle B, Title 3, Occupations Code; or

(2) the holder of a license under that subtitle.

Furthermore, pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency].” Gov’t Code § 411.087(a)(2). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2).

In this instance, the requestor is an investigator with the SBME. The requestor specifically seeks “certified copies of [the named physician’s] arrest report, and any other relevant documents for the case.” We conclude that when read together, section 153.006 of the Occupations Code and sections 411.087 and 411.099 of the Government Code give the SBME a statutory right of access to a portion of the requested information. *See also* Gov’t Code § 411.082(2); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675,

678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Therefore, the department must release information from the submitted documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Public Information Act). The remainder of the submitted information is confidential under section 261.201 of the Family Code and must be withheld. As we are able to make this determination, we need not address your remaining arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 168697

Encl. Submitted documents

cc: Ms. Carole A. Edwards
Senior Investigator, Enforcement Division
Texas State Board of Medical Examiners
P.O. Box 2018
Austin, Texas 78768-2018
(w/o enclosures)