



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 25, 2006

Ms. P. Armstrong  
City of Dallas  
Assistant City Attorney  
Criminal Law and Police Division  
1400 South Lamar  
Dallas, Texas 75215

OR2006-11104

Dear Ms. Armstrong:

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# 259980.

The Dallas Police Department (the "department") received a request for a specified incident report. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 section encompasses section 261.201(a) of the Family Code, which 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:

---

<sup>1</sup>We 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.

- (1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that the submitted incident report was used or developed in an investigation of alleged or suspected child abuse. *See Id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). Based on your representations and our review, we find that this report falls within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Accordingly, the submitted incident report is confidential under section 261.201 of the Family Code.

We note, however, that the requestor states she is an employee with the United States Investigations Services (“USIS”). We also note that USIS is under contract to perform investigations on behalf of the United States Office of Personnel Management (“OPM”). OPM is authorized to perform background investigations of prospective federal employees to ensure that applicants have not broken the law or engaged in other conduct making them ineligible for federal employment. *See Mittleman v. Office of Pers. Mgmt.* 76 F.3d 1240, 1243 (D.C. Cir. 1996); *see also* 5 U.S.C. §§ 1104 (2000) (president may delegate personnel management functions to OPM), 1304 (investigations conducted by OPM), 3301 (president may prescribe regulations for admission of individuals into civil service); 5 C.F.R. pts. 731, 732, 736 (authorizing OPM to investigate applicants for federal employment). OPM is subject to Executive Order Number 10,450, which provides that “[t]he appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation.” Exec. Order No. 10,450, § 3, 18 Fed. Reg. 2489 (Apr. 27, 1953), reprinted as amended in 5 U.S.C. § 7311 (2000). While the scope of the investigation depends on the relation of the employment to national security, “in no event shall the investigation include less than a national agency check (including a check for the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies.” *Id.*

OPM has a right to the criminal history record information (“CHRI”) of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See* 5 U.S.C. § 9101(b)(1), (c). Furthermore, where USIS conducts an investigation on behalf of OPM, USIS is authorized to receive CHRI. 20 Op. Off. Legal Counsel 299 (1996). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release” but does not include

“identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

In this instance, the requestor has not indicated that she is conducting a background investigation for a national security or public trust employment position. Furthermore, the requestor has not submitted written consent from the individual under investigation for the release of the information at issue. Therefore, we must rule conditionally on this matter. If the requestor is seeking the requested information as part of an investigation conducted on behalf of the OPM, and the subject of the records has consented to the investigation, the requestor has a right of access to any CHRI held by the department. In addition, we conclude that such a right of access under federal law preempts the state confidentiality provision you claim. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *see also Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Therefore, to the extent the requestor seeks the information at issue as part of an investigation conducted on behalf of the OPM, and the subject of the records has consented, the department must release any CHRI to the requestor. The department must withhold the remaining portion of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the requestor is not seeking the information at issue on behalf of the OPM, or the subject of the records has not consented to the investigation, the information at issue is confidential under section 261.201 and must be withheld under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Pub. 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 Office of the Attorney General 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/krl

Ref: ID# 259980

Enc. Submitted documents

c: Ms. Beverly Burrage  
U. S. Office of Personnel Management  
1320 Greenway, Suite 930  
Irving, Texas 75038  
(w/o enclosures)