



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2009

Ms. Teresa J. Brown  
Sr. Open Records Assistant  
City of Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2009-11342

Dear Ms. Brown:

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# 352006.

The Plano Police Department (the "department") received a request for information pertaining to two specific case numbers. You claim that the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted documentation, which we have marked, is not responsive to the instant request for information as it does not relate to the request. The department need not release non-responsive information in response to this request, and this ruling will not address that information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed).

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 information that is protected by statute. You claim the submitted information is confidential in its entirety under section 552.101 in conjunction with section 261.201 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:

(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 understand that the submitted information was used or developed in an investigation of child endangerment and abandonment. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for the purposes of chapter 261 of the Family Code); Penal Code § 22.041(b). Furthermore, the submitted information reflects that the information was referred to Child Protective Services. Thus, we find that the submitted information is 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. Given this assumption, we conclude that the submitted information is subject to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

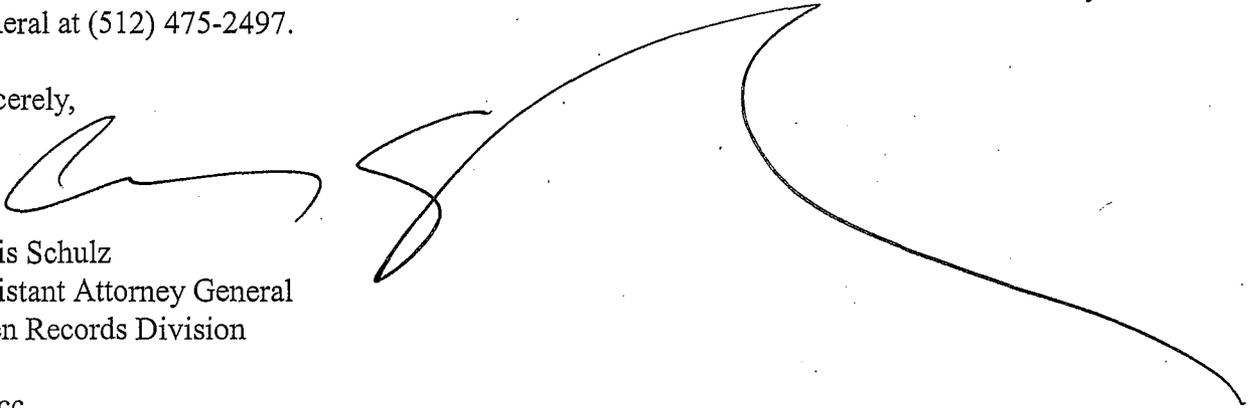
The requestor, however, is a representative of the Community Development Authority in Madison, Wisconsin. The requestor states the records will be used for the purpose of processing an individual’s housing application. Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides that “[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). In Open Records Decision No. 655 (1997), this office concluded this federal statute authorizes local housing authorities to obtain the criminal history record information (“CHRI”) of adult applicants and tenants. 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). However, the federal law limits the purposes for which a public housing authority may request CHRI. It provides, among other things, that (1) public housing agencies may receive CHRI of adult applicants or tenants of public housing, and (2) CHRI

may only be used for purposes of applicant screening, lease enforcement, and eviction. See 42 U.S.C. § 1437d(q)(1)(A); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law.” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 261.201 of the Family Code. Cf. *Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Thus, any CHRI of adult tenants of public housing that is contained within these reports must be released to this requestor in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655. See also 24 C.F.R. § 5.903 (describing public housing authorities’ access to criminal records). The remaining information contained in these reports must be withheld under section 552.101 of the Government Code in conjunction with section 261.201.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 352006

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)