



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 24, 2009

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2009-13477

Dear Ms. Aguilar:

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# 356265.

The Corpus Christi Police Department (the "department") received a request for information related to four specified offense reports regarding a named individual.<sup>1</sup> You state you have provided some information to the requestor. 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 information. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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

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<sup>1</sup> We note the requestor modified her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

(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). Report number 95-048498 was used in an investigation of an alleged sexual assault of a child. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011). Therefore, this information is within the scope of section 261.201. You do not indicate that the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Therefore, report number 95-048498 is generally confidential under section 261.201.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 97-031668 relates to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we conclude that section 552.108(a)(2) is generally applicable to report number 97-031668.

However, as you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may generally withhold report number 97-031668 under section 552.108(a)(2) of the Government Code.

In this instance, however, the requestor works for the Texas Department of Insurance (“TDI”). We believe the requestor may have a statutory right of access to some of the information at issue. Section 411.106(a)(1) of the Government Code provides that TDI is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the State Board of Insurance to engage in an activity regulated under the Insurance Code. Gov’t Code § 411.106(a)(1). Thus, to the extent the requestor is seeking criminal history record information regarding a license applicant, TDI is authorized to receive

criminal history record information from the DPS. Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain criminal history record information 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). Accordingly, TDI is also authorized to receive criminal history record information from a local criminal justice agency, such as the department. *See* Open Records Decision No. 655 (1997); *see also* Gov't Code §§ 411.083(b)(2), 411.087(a). Criminal history record information 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 regard to report number 95-048498, section 261.201(a) of the Family Code provides that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." Fam. Code § 261.201. Chapter 411 of the Government Code constitutes "applicable state law" in this instance. Accordingly, with reference to report number 95-048498, if the individual who is named as the suspect in the submitted report is indeed an applicant for a license from TDI, the requestor is authorized to obtain criminal history record information from the department pursuant to section 411.106(a)(1) of the Government Code, but only for purposes consistent with the Family Code. *See* Gov't Code §§ 411.087(a)(2), .106(a)(1); *see also* Fam. Code § 261.201(a). The department must, however, withhold the remaining information in report number 95-048498 pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

In regard to report number 97-031668, if the suspect in the submitted report is an applicant for a license from TDI, the department must make available to the requestor the criminal history record information from the documents otherwise subject to section 552.108 pursuant to section 411.106(a)(1) of the Government Code. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code.

We note, however, the interagency transfer doctrine provides that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinion GA-0055 (2003); Open Records Decision Nos. 680 at 7 (2003), 667 at 3-4 (2000). However, an interagency transfer of confidential information is prohibited where a confidentiality statute enumerates specific entities to which release of confidential information is authorized, and the requesting agency is not among the statute's enumerated entities. *See* Attorney General Opinion DM-353 at 4 n.6 (1995); Open Records Decision No. 661 at 3 (1999). Section 552.108 is not a confidentiality statute that enumerates specific entities to which release of the confidential information is authorized. Accordingly, the department has the discretion to release report

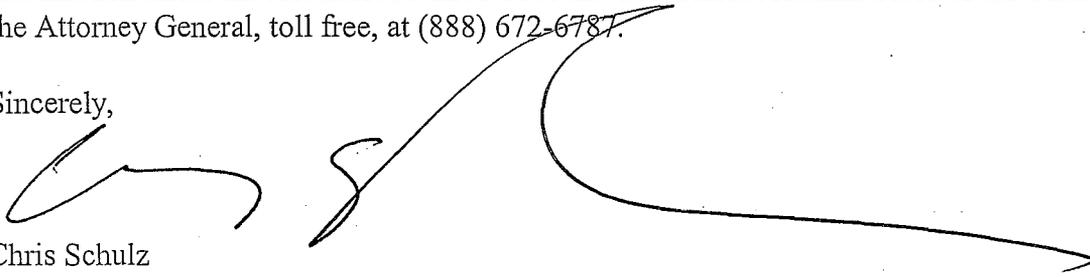
number 97-031668 in its entirety to the requestor pursuant to the interagency transfer doctrine.

In summary, if the individual who is named as the suspect in report number 95-048498 is an applicant for a license from the Texas Department of Insurance, and the requestor intends to use this information only for purposes consistent with the Family Code, then pursuant to section 411.106(a)(1) of the Government Code the department must make available to the requestor criminal history record information from report number 95-048498. If the suspect in report number 97-031668 is an applicant for a license from the Texas Department of Insurance, then the department must make available to the requestor the criminal history record information in this report pursuant to section 411.106(a)(1) of the Government Code. With the exception of basic information, the department may withhold the remaining information in report number 95-048498 under section 552.108(a)(2) of the Government Code. Pursuant to the intergovernmental transfer doctrine, the department has the discretion to release to the requestor report number 95-048498.

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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 356265

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)