



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2009

Ms. Denise Reynolds
Records Clerk
Crowley Police Department
P.O. Drawer 747
Crowley, Texas 76036-0747

OR2009-15929

Dear Ms. Reynolds:

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# 360908.

The Crowley Police Department (the "department") received a request for information related to a specified arrest of a named individual. You claim that 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 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." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(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

(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). Upon review, we find that the submitted information consists of a report of alleged or suspected child abuse made under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); Penal Code § 22.011(c)(1) (defining “child” for purposes of sexual assault as a person younger than seventeen years of age). Therefore, this report falls within the scope of section 261.201. However, information subject to section 261.201 “may be disclosed . . . for purposes consistent with . . . applicable federal or state law.” Fam. Code § 261.201(a). In this instance, the requestor identifies herself as an investigator from the Enforcement Department of the Texas Board of Nursing (the “board”). Section 411.125 of the Government Code provides in relevant part:

(a) The [board] 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:

- (1) is an applicant for or holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov’t Code § 411.125(a). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

- ...
- (2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). “Criminal history record information” (“CHRI”) is defined as “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.” *See id.* § 411.082(2). Thus, under

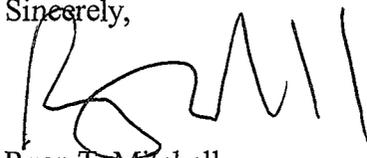
section 411.125, the board may have a right of access to CHRI about the named person contained in the department's records.

Accordingly, if the department determines that release is consistent with the purposes of the Family Code and the suspect in the submitted information is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then the requestor is authorized to obtain CHRI contained in the submitted report. The remaining information in the report must, however, be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the department determines that release is not consistent with the purposes of the Family Code or the suspect does not meet the criteria of section 411.125(a), then the board does not have a right of access to CHRI in the submitted information and the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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, 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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 360908

Enc. Submitted documents

cc: Requestor
(w/o enclosures)