



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

Ms. Delietrice Henry
Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-05206

Dear Ms. Henry:

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# 375830.

The Plano Police Department (the "department") received a request for reports pertaining to two specified arrests. You claim 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. This exception encompasses information protected by other statutes, such as 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 determine that incident report number 200200000193 relates to an investigation of alleged child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age). Thus, we find incident report number 200200000193 is generally confidential under section 261.201 of the Family Code. However, you have failed to demonstrate that any portion of the remaining submitted information was used or developed in an investigation of child abuse or neglect under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Further, section 261.201(a) provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

We note that chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person.” Gov’t Code § 411.089(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” 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.” *Id.* § 411.082(2). Upon review, we determine that incident report number 200200000193 contains “criminal history record information.” However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information

for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, if the requestor in this instance represents a “criminal justice agency,” he is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Code Crim. Proc. art. 60.01(1).

The requestor, in this instance, is a representative of the Government Accountability Office, Office of Forensic Audits and Special Investigations. Although it appears that the requestor may be engaged in the administration of criminal justice, we cannot determine whether he intends to use the submitted criminal history record information for a criminal justice purpose and for purposes consistent with the Family Code. Consequently, if the department determines that the requestor intends to use the submitted criminal history record information for a criminal justice purpose and for purposes consistent with the Family Code, we conclude that the department must make available to the requestor information from incident report number 200200000193 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 Act). In that instance, the department must withhold the remainder of incident report number 200200000193 from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If, however, the department determines that the requestor does not seek this information for a criminal justice purpose and for purposes consistent with the Family Code, the department must withhold incident report number 200200000193 from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5. (1986); *see also* Open

Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure), 440 at 2 (1986) (construing predecessor statute); Fam. Code § 261.201(b)-(g), (i)-(l) (listing circumstances under which 261.201 information may be released). In any case, the department may not withhold any of the remaining information under section 552.101 and section 261.201(a).

We note the portions of the remaining information are subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure “information [that] relates to...a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130. Therefore, the department must withhold the information we have marked under section 552.130 of the Government Code.²

In summary, if the department determines that the requestor intends to use the criminal history record information in incident report number 200200000193 for a criminal justice purpose and for purposes consistent with the Family Code, the department must release that criminal history record information to the requestor and withhold the remaining information in incident report number 200200000193 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Otherwise, the department must withhold incident report number 200200000193 in its entirety pursuant to section 552.101 in conjunction with section 261.201(a) of the Family Code. In either case, the department must withhold the information we have marked under section 552.130 of the Government Code and release the remaining information.³

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,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver’s license number and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 375830

Enc. Submitted documents

c: Requestor
(w/o enclosures)