



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2014

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-00189

Dear Mr. Ortiz:

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# 509849 (El Paso ID# 13-1026-3606/W001619-100413).

The El Paso Police Department (the "department") received a request for information pertaining to a specified arrest of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions 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 section encompasses 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 [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 the submitted information was used or developed in an investigation of alleged or suspected child abuse. Upon review, we find this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1) (definition of “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential pursuant to section 261.201 of the Family Code. However, section 261.201(a) also provides 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 chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is an investigator with the Texas Department of State Health Services (“TDSHS”). Section 411.122(a) of the Government Code provides, in part,

an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information [“CHRI”] maintained by the [Department of Public Safety] that relates to a person who:

(1) is an applicant for a license from the agency;

(2) is the holder of a license from the agency; or

(3) requests a determination of eligibility for a license from the agency.

Gov’t Code § 411.122(a). We note TDSHS is specifically subject to section 411.122 of the Government Code. *See id.* § 411.122(d)(8). 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] [CHRI] 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 [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). 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).

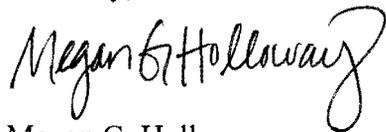
Accordingly, if the named individual is an applicant for or a holder of, or has requested a determination of eligibility for, a license from TDSHS, then pursuant to sections 411.087(a)(2) and 411.122 of the Government Code, the requestor is authorized to obtain CHRI pertaining to the named individual from the department for purposes consistent with the Family Code. *See id.* §§ 411.087(a)(2), .122(a); *see also* Fam. Code § 261.201(a). Consequently, if these conditions are met, then the department must release CHRI pertaining to the named individual to this requestor and must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We note specific statutory right of access provisions overcome the general exceptions to disclosure found in the Act, such as sections 552.103 and 552.108 of the Government Code. *See* Open Records Decision No. 451 (1986). However, if the named individual does not meet any of the criteria of subsection 411.122(a)(1) through (3), or if the release of this information would not be for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *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), 440 at 2 (1986) (construing predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

¹In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping "y" at the end.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/dls

Ref: ID# 509849

Enc. Submitted documents

c: Requestor
(w/o enclosures)