



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2014

Ms. Rebecca Hendricks Brewer  
Counsel for the City of Wylie  
Abernathy Roeder Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2014-11155

Dear Ms. Brewer:

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# 530812.

The Wylie Police Department (the "department"), which you represent, received a request for a specified incident report. The department claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[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). You assert the requested information was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find the information is within the scope of section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we find the submitted information is generally confidential pursuant to section 261.201 of the Family Code.

However, the requestor is a community supervision officer of the Collin County Community Supervision and Corrections Department. Section 261.201(a) 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). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information maintained by the [Texas Department of Public Safety] about a person.” *See Gov’t Code* § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Texas Department of Public Safety] criminal history record information maintained by the [Texas 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). We note “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.” *See id.* § 411.082(2). Thus, the information at issue 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). Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information, we note a statutory right of access prevails over the common-law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no conflicting or controlling statutory law). Thus, to the extent the requestor in this instance represents a “criminal justice agency,” the requestor 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).

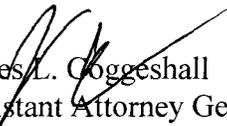
Section 411.082 defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” Gov’t Code § 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 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.” Crim. Proc. Code art. 60.01(1).

Although it appears the requestor is engaged in the administration of criminal justice for purposes of chapter 411, we are unable to determine whether he intends to use the requested criminal history record information for a criminal justice purpose. We also are unable to determine whether the requestor intends to use the information for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the criminal history record information for a criminal justice purpose and for purposes consistent with the Family Code, then the department must release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor does not intend to use the criminal history record information for a criminal justice purpose or for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with section 261.201. *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 530812

Enc. Submitted documents

c: Requestor  
(w/o enclosures)