



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2014

Ms. Stephanie H. Harris
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2014-12672

Dear Ms. Harris:

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# 531213.

The Paris Police Department (the "department") received a request for all investigative and arrest reports of a named individual, including information pertaining to a specified arrest. You state the department has released some of the requested information to the requestor. 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. We have also received and considered comments from an interested third party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part, 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

(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 agree the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given this assumption, we conclude the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Eastern District of Texas (the “probation office”). Section 261.201 provides 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(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 (“DPS”)] any criminal history record information [(“CHRI”)] maintained by the [DPS] about a person.” Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing DPS shall grant criminal justice agencies access to CHRI). 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 [DPS CHRI] maintained by the [DPS] 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). We note 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). A criminal justice agency that receives CHRI

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 CHRI). 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). In this instance, it appears the probation office is engaged in the administration of criminal justice for purposes of chapter 411. Thus, the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Fam. Code § 261.201(a), Gov’t Code §§ 411.083(c), .087(a)(2).

We are unable to determine whether the requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the department determines the requestor intends to use the CHRI for a criminal justice purpose and release of the information is consistent with chapter 261 of the Family Code, then we conclude the department must make available to the requestor the CHRI from the submitted information that shows the type of allegation made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that event, the department must withhold any remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also raise section 552.101 of the Government Code in conjunction with common-law privacy. We note statutory access provisions generally prevail over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when it directly conflicts with common-law principle); *see also Cash Am. Intern. Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute depriving person of common-law right will not be extended beyond its plain meaning or applied to cases not clearly within its purview). Thus, we do not address your argument under section 552.101 in conjunction with common-law privacy.

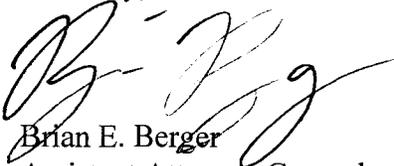
In summary, if the department determines the requestor intends to use the CHRI for a criminal justice purpose and release of the information is consistent with chapter 261 of the Family Code, then the department must make available to the requestor the CHRI from the submitted information. The department must withhold any remaining information under

section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose or release of the information is not consistent with chapter 261 of the Family Code, then 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.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ds

Ref: ID# 531213

Enc. Submitted documents

c: Requestor
(w/o enclosures)