



February 12, 2015

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

OR2015-02792

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# 556001 (PIR# 14-1026-4999).

The El Paso Police Department (the "department") 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 section 261.201(a) of the Family Code, which 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 representative of the United States Army (the “Army”), who states the information is needed for “administrative action.” The United States Department of Defense (the “DoD”) is authorized to perform background investigations of persons seeking acceptance or retention in the armed services. *See* 5 U.S.C. § 9101(b)(1)(C); *see also id.* § 9101(a)(6)(A) (DoD is covered agency for purposes of section 9101). The Army has a right to the criminal history record information of state and local criminal justice agencies when the named individual has provided the Army with consent for the release of the criminal history record information. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(6) (DoD includes Department of the Army). Criminal history record information is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

Federal law provides the Army’s right of access to criminal history record information preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law . . . of any State”). The Army’s right of access under federal law preempts the state confidentiality provision you claim. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Army’s right of access is contingent on the request being made for eligibility or retention purposes, and on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c).

We are unable to determine if the individual under investigation is seeking retention in the armed services and if the request is for retention purposes. Further, we have no indication the individual under investigation provided the Army with a signed authorization for the release of the information at issue. Nevertheless, if the Army made the request for information for retention purposes and provides a signed written consent for release from the individual being investigated, then the department must release the criminal history record information from the submitted information, 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 Army either did not make the request for retention purposes or does not provide a written consent for release, then the department must withhold the submitted information in its entirety under section 552.101 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 556001

Enc. Submitted documents

c: Requestor
(w/o enclosures)