



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2015

Mr. Vance Hinds
Assistant County and District Attorney
County of Ellis
Ellis County Courts Building
109 South Jackson Street
Waxahachie, Texas 75165

OR2015-06038

Dear Mr. Hinds:

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# 557997.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for the sworn statement related to the probable cause affidavit pertaining to a specified incident. 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, the submitted information is subject to section 261.201 of the Family Code. However, section 261.201(a) also 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).

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.” *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 [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). 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 submitted information 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 is a “criminal justice agency,” it is authorized to obtain criminal history record information from the sheriff’s office 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 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, 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).

The requestor is a representative of the Sex Offender Trafficking Program of the California Department of Justice (“CDOJ”). Although CDOJ is engaged in the administration of criminal justice for purposes of chapter 411, we are unable to determine whether the requestor intends to use the requested CHRI 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 sheriff’s office determines the requestor intends to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the sheriff’s office must release any CHRI from the information at issue that is otherwise subject to section 261.201 of the Family Code. Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for this information, we note a statutory right of access prevails over the common-law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *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 statute directly conflicts with common-law principle); 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 instance, the sheriff’s office 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 sheriff’s office determines the requestor does not intend to use the CHRI for a criminal justice purpose or for purposes consistent with the Family Code, then the sheriff’s office 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 section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).¹

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 557997

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.