



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 22, 2015

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2015-19776

Dear Ms. Armstrong:

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# 580183 (ORR# 2015-10108).

The Dallas Police Department (the "department") received a request for all information relating to a specified incident involving a named individual. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception the department claims and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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<sup>1</sup>We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the exception the department claims can provide a compelling reason to overcome the presumption of openness, we will consider the department's claimed exception for the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.101. This section encompasses information protected by other statutes, such as 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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As the department does not indicate it has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine 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).

We note chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is a representative of the Commonwealth of Massachusetts Sex Offender Registry Board. Thus, the requestor may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides, “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] any criminal history record information [“CHRI”] maintained by the [DPS] about a person.” *See* Gov't Code § 411.089(a). 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 or Subchapter E-1 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.

Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337-4338 (Vernon) (to be codified as an amendment to Gov't Code § 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). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may receive such information only 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). Thus, if the requestor in this instance is a representative of a "criminal justice agency" and seeks the information for purposes consistent with the Family Code, then she is authorized to obtain the CHRI from the submitted information pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code § 411.083(c); Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337-4338 (Vernon) (to be codified as an amendment to Gov't Code § 411.087(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 of the Code of Criminal Procedure 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 [CHRI]." Crim. Proc. Code art. 60.01(1).

Although it appears the requestor is a representative of a criminal justice agency and intends to use the information for a criminal justice purpose, we are unable to determine whether the release of the information in this instance would be for purposes consistent with the Family Code. Accordingly, we must rule conditionally. If the department determines the release of the CHRI is for purposes consistent with the Family Code, we conclude the department must make available to the requestor any CHRI from the submitted 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. In that event, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department

determines the release of the CHRI is not for purposes consistent with 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(a) of the Family Code.<sup>3</sup>

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 580183

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note that because the requestor has a statutory right of access to any information being released in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.