



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 23, 2015

Mr. Francis D. Underwood  
Paralegal  
County of El Paso  
El Paso County Attorney's Office  
County Courthouse  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2015-19898

Dear Mr. Underwood:

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# 582236 (File No. 0175-15-PI).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. The sheriff's office claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address the sheriff's office's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). You inform us the sheriff's office received the request for information on July 17, 2015. Thus, the ten-business-day deadline for the sheriff's office to request a ruling was July 31, 2015. However, the envelope containing your request for a ruling from this office is postmarked August 1, 2015. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class

United States mail). Therefore, the sheriff's office failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the sheriff's office's claim under section 552.108 is not a compelling reason to overcome the presumption of openness, and the sheriff's office may not withhold any of the submitted information on that ground. However, the need of another governmental body to withhold information under sections 552.103 and 552.108 can provide compelling reasons under section 552.302. *See* Open Records Decision No. 586 at 3, 469 (1987) (university may withhold information under Gov't Code § 552.103 predecessor to protect district attorney's interest in anticipated criminal litigation). Because the sheriff's office informs us that the Office of the District Attorney for the 34th Judicial District (the "district attorney's office") objects to the release of the requested information under sections 552.103 and 552.108, we will consider the claims of the district attorney's office. Section 552.101 of the Government Code also can provide a compelling reason to overcome this presumption. Accordingly, we will consider whether this section requires the sheriff's office to withhold 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). The sheriff's office asserts 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. However, section 261.201(a) provides information encompassed by this section may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a).

We note 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 or Subchapter E-1 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.

Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4337, 4338 (to be codified as an amendment to Gov't Code §411.087(a)). "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), 411.087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). 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* Gov’t Code § 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, 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.” Code Crim. Proc. art. 60.01(1). Thus, if the requestor is a representative of a “criminal justice agency,” he 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 id.* §§ 411.083(c), 411.087(a)(2); *see also* Fam. Code § 261.201(a).

The requestor identifies himself as a prosecutor for the United States Army. Thus, we understand the requestor is a representative of a criminal justice agency. However, we are unable to determine whether he intends to use the criminal history record information for a criminal justice purpose or 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 information from the submitted documents 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. We note specific statutory right of access provisions overcome the general exceptions to disclosure found in the Act, including sections 552.103 and 552.108 of the Government Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). If the department determines the requestor does not seek this information for a criminal justice purpose or for purposes consistent with the Family Code, then the department must withhold the submitted information from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) 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# 582236

Enc. Submitted documents

c: Requestor  
(w/o enclosures)