



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2015

Mr. Grant Jordan
Assistant City Attorney
City of Fort Worth
Office of the City Attorney
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2015-21574

Dear Mr. Jordan:

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# 583056 (PIR Nos. W044578 and W045128).

The Fort Worth Police Department (the "department") received two requests from different requestors for information pertaining to a specified incident. You state you have released some information to the first requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. This exception encompasses information made confidential 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 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 find the submitted information was used or developed in investigations by the department of alleged or suspected child abuse. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (to be codified as an amendment to Fam. Code § 261.001(1)) (defining “abuse” for purposes of Fam. Code ch. 261); *see also* Fam. Code § 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). Thus, we find the information at issue is within the scope of section 261.201(a) 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 that assumption, we find the submitted information is generally confidential under section 261.201(a) of the Family Code.

However, we note the first requestor identifies himself as an investigator with the Office of the Federal Public Defender of the Southern District of Illinois (the “public defender’s office”). Section 261.201(a) provides that 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 411.1272 of the Government Code provides:

[A] public defender’s office [is] entitled to obtain from the [Texas Department of Public Safety (“DPS”) criminal history record information (“CHRI”)] maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Act of May 30, 2015, 84th Leg., R.S., ch. 1215, § 25, 2015 Tex. Sess. Law Serv. 4056, 4060 (Vernon) (to be codified as an amendment to Gov’t Code § 411.1272). 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 [DPS CHRI] maintained by [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 Gov. Code § 411.082(2). Upon review, we find the submitted information contains CHRI. Thus, the first requestor is authorized to obtain the CHRI in the submitted information from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender's office is appointed and if release of the information is consistent with the Family Code. See 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)), Act of May 30, 2015, 84th Leg., R.S., ch. 1215, § 25, 2015 Tex. Sess. Law Serv. 4056, 4060 (Vernon) (to be codified as an amendment to Gov't Code § 411.1272); see also Fam. Code § 261.201(a). However, we are unable to determine whether the release of the CHRI in the submitted information to the first requestor is consistent with the Family Code. Therefore, if the department determines release of the CHRI to the first requestor is not consistent with the Family Code or the information does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines release of the CHRI to the first requestor is consistent with the Family Code and the information relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you raise section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code for this information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108 and 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 statute directly conflicts with common-law principle); *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); 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 this instance, the department must withhold the remaining information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, we note the second requestor is a representative of the Probation and Pretrial Services Office of the Southern District of Illinois (the “probation office”). To the extent this requestor represents a “criminal justice agency,” she 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 and for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .089(a); 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). However, 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* Gov’t Code § 411.083(c), Act as 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(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 [CHRI].” Crim. Proc. Code art. 60.01(1). The probation office states it is conducting a presentence investigation of the named individual. Thus, we find the probation office is engaged in the administration of criminal justice for purposes of chapter 411. Therefore, the probation office 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 and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a); 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)). We note the probation office states it intends to use the CHRI for criminal justice purposes.

However, we are unable to determine whether release of the CHRI in the submitted information to the second requestor is consistent with the Family Code. Accordingly, if the

department determines release of the CHRI to the second requestor is not consistent with the Family Code, the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines that release of the CHRI to the second requestor is consistent with the Family Code, then the department must release the information that shows the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you raise section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code for this information, as previously noted, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108 and the common law. *See Collins*, 297 S.W.3d at 415; *CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544; ORDs 613 at 4, 451. In this instance, the department must withhold the remaining information at issue from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, if the department determines release of the CHRI to either of the requestors is not consistent with the Family Code, the department must withhold the submitted information in its entirety from that requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines release of the CHRI to the first requestor is consistent with the Family Code and the information relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code. The department must withhold the remaining information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines that release of the CHRI to the second requestor is consistent with the Family Code, then the department must release the information that shows the types of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information from the second requestor 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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', written over a horizontal line.

Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/cbz

Ref: ID# 583056

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)