



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 23, 2015

Ms. Captoria Brown
Paralegal
Office of the City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2015-24568

Dear Ms. Brown:

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# 588267 (City ID# 5731).

The Carrollton Police Department (the "department") received a request for all records related to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified the Dallas County District Attorney's Office (the "district attorney's office") of the instant request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received correspondence from the district attorney's office, which claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have reviewed the submitted arguments 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 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 agree the submitted information was used or developed in an investigation of alleged child abuse. Fam. Code § 261.001(1) (defining “abuse” for purposes of chapter 261 of Family Code); *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). Accordingly, we find the information at issue falls within the scope of section 261.201(a) of the Family Code. Because 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. Thus, the information is generally confidential pursuant to section 261.201 of the Family Code. However, section 261.201(a) provides 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).

We note the requestor is an investigator with the Office of Capital Writs (the “OCW”). Section 411.1272 of the Government Code provides:

The office of capital and forensic writs [is] entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a criminal case in which an attorney compensated by the office of capital and forensic writs . . . has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), 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.

Gov't Code § 411.087(a)(2). "Criminal history record information" ("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't Code § 411.082(2).

The requestor states the OCW was appointed to represent the named individual in his post-conviction review proceedings in connection with the criminal case, which the district attorney's office informs us is pending appeal before the Texas Court of Criminal Appeals. Accordingly, the 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. *See* Gov't Code §§ 411.087(a)(2), .1272. However, as noted above, section 261.201(a) states any release must be "for purposes consistent with the Family Code." *See* Fam. Code § 261.201(a). Although the requestor informs us the OCW has been appointed to represent the named individual in post-conviction review proceedings in connection with the criminal case, this office cannot determine whether the release of the information is consistent with the Family Code. Therefore, if the department determines release of the CHRI is not 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. *See id.* § 261.201(b)-(g), (k) (listing entities authorized to receive information under section 261.201 of the Family Code). However, if the department determines release of the CHRI is consistent with the Family Code, 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 the department also seeks to withhold the CHRI under section 552.101 of the Government Code in conjunction with common-law privacy, and the district attorney's office seeks to withhold the CHRI under sections 552.103 and 552.108 of the Government Code, a specific statutory right of access prevails over the general exceptions to disclosure found in the Act, such as sections 552.103 and 552.108, as well as the common law. *See* 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); *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). Therefore, the department may not withhold the CHRI at issue pursuant to section 552.101 of the Government Code in conjunction with common-law privacy or section 552.103 or section 552.108 of the Government Code on behalf of the district attorney's office. In this instance, 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.

In summary, if the department determines release of the CHRI is not 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 of the Family Code. However, because the requestor is an investigator with the OCW, pursuant to sections 411.087 and 411.1272 of the Government Code, the department must release the

CHRI if the department determines release is consistent with the Family Code. In this instance, the department must withhold the remaining information pursuant to 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 588267

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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