



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

Mr. Omar De La Rosa
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950

OR2016-10266

Dear Mr. De La Rosa:

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# 608712 (EP ID#s 16-1026-7141, 16-1026-7180).

The El Paso Police Department (the "department") received two requests from the same requestor for information pertaining to a specified offense. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ 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 other statutes make confidential. Section 261.201 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

¹Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. See Gov't Code §§ 552.301, .302.

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 by the department of alleged child abuse. *See id.* §§ 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, we find the information at issue falls within the scope of section 261.201(a) of the Family Code and the department must generally withhold it under section 552.101 on this basis. 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.” *Id.* § 261.201(a).

We note the requestor is with the Office of the Public Defender of El Paso (the “public defender’s office”). 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 maintained by the [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office 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.

Id. § 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 id.* § 411.082(2).

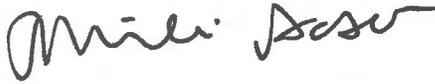
Accordingly, the requestor is authorized to obtain the CHRI in the submitted information from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which the requestor is appointed. *See id.*; *see also id.* § 411.1272. Because this office cannot determine whether the release of the information is consistent with the Family Code, we must rule conditionally. Therefore, if the department determines release of the CHRI is not consistent with the Family Code or does not relate to a criminal case in which the requestor is appointed, then the department must withhold the 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 and is related to a criminal in which the requestor 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 the department seeks to withhold the CHRI under sections 552.103 and 552.108 of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).* Therefore, the department may not withhold the CHRI at issue pursuant to section 552.103 or section 552.108 of the Government Code. In this instance, the department must withhold the remainder of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code, the department must release the CHRI to this requestor if 1) the CHRI relates to a criminal case in which the requestor is appointed, and 2) the department determines release is consistent with the Family Code pursuant to section 261.201(a) of the Family Code. In that instance, the department must withhold the remainder of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If neither of the above stated conditions is present, 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.

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 608712

Enc. Submitted documents

c: Requestor
(w/o enclosures)