



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2016

Mr. Bryan Scott McWilliams
Assistant City Attorney
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2016-12484

Dear Mr. McWilliams:

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# 612967.

The City of Amarillo (the "city") received a request for information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

¹We note the city failed to comply with its procedural obligations under the Act. *See* Gov't Code § 552.301(b). However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the information at issue. *Id.* § 552.302.

(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 submitted report consists of information used or developed in an investigation under chapter 261; therefore, the submitted information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also 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). Thus, the submitted report is generally confidential under section 261.201 of the Family Code. We note, however, the requestor is a representative of the Washington Department of Corrections (the “WDC”). Section 261.201(a) also provides that 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). In this instance, section 58.007 of the Family Code may constitute “applicable state law” for purposes of section 261.201(a).

Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Id. § 58.007(c), (e). We find the submitted report involves juvenile delinquent conduct that occurred after September 1, 1997. Thus, the report is subject to section 58.007. However, as stated above, the requestor is a representative of the WDC. Section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code," a right of access to juvenile law enforcement records. 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 criminal history record information." Crim. Proc. Code art. 60.01(1).

We understand the WDC is a criminal justice agency as defined by section 411.082. *See* Gov't Code § 411.082(3)(A). Accordingly, the requestor has a right of access to the submitted information under section 58.007(e) of the Family Code, which constitutes "applicable state law" for purposes of section 261.201(a). We note although the city asserts the information at issue is excepted under section 552.101 of the Government Code in conjunction with common-law privacy, a statutory right of access generally prevails over 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); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law).

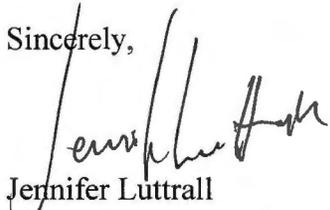
We next note that in addition to a right of access under "applicable state law," section 261.201(a) also requires that release be "for purposes consistent with the [Family Code]." Therefore, if the WDC intends to use the submitted report for purposes consistent with the Family Code, as required by section 261.201(a), then the city must release the report to the WDC pursuant to section 58.007(e) of the Family Code. However, if the city determines the requestor does not intend to use the report for purposes consistent with the Family Code, then the submitted report must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, if the city determines the requestor does not intend to use the submitted information for purposes consistent with the Family Code, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines the requestor intends to use the submitted information for purposes consistent with the Family Code, the city must release the submitted information to this requestor pursuant to section 58.007(e) of the Family Code.²

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 612967

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the city must again seek a decision from this office if it receives a request for this information from a different requestor.