



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 1, 2016

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2016-19821

Dear Ms. Pemberton:

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# 625060 (W019557).

The Killeen Police Department (the "department") received a request for three specified police reports. You state the department has released some information. 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 section encompasses information protected 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find police report number 16-005340 was used or developed in an investigation of alleged or suspected child neglect; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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(4) (defining “neglect” for purposes of chapter 261 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 regulation exists. Given that assumption, and based on our review, we determine report number 16-005340 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In this instance, however, the requestor is a military prosecutor and may have a right of access to some of the information at issue. 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). 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 [Texas Department of Public Safety] any criminal history record information maintained by the [Texas 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 [Texas Department of Public Safety] criminal history record information maintained by the [Texas 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). We note “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 information at issue contains criminal history record information (“CHRI”). 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 id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor in this instance represents a “criminal justice agency,” he 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), .087(a)(2); *see also* Fam. Code § 261.201(a).

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 requestor states he intends to use the CHRI from the report number 16-005340 for criminal justice purposes. However, we are unable to determine whether the requestor intends to use the CHRI for purposes consistent with the Family Code. Accordingly, if the department determines release of the CHRI at issue is consistent with the Family Code, then the department must release from report number 16-005340 information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the department must withhold the remaining information in report number 16-005340 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the department must withhold report number 16-005340 in its entirety pursuant to section 552.101 in conjunction with section 261.201. *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Your state police report number 16-006023 relates to a pending case, and the release of that information would interfere with the investigation and prosecution of the crime. Further, you state the Bell

County Prosecutor has advised the release of report number 16-006023 would interfere with the prosecution of the pending case. Based on these representations and our review, we find release of police report no. 16-006023 would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we agree section 552.108(a)(1) of the Government Code is applicable to report number 16-006023.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state police report number 16-005878 relates to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to report number 16-005878.

We note, and you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which you state has been released, the department may generally withhold report numbers 16-006023 and 16-005878 under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code, respectively.

As previously discussed, however, the requestor has a right of access under chapter 411 of the Government Code to portions of this information. *See* Gov't Code § 411.087(a)(2). Therefore, the department must make available to the requestor the CHRI from report numbers 16-006023 and 16-005878 that show the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions under the act). With the exception of basic information, which you state has been released, the department may withhold the remaining information in report numbers 16-006023 and 16-005878 under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code, respectively.

In summary, if the department determines the requestor intends to use the CHRI in report number 16-005340 for purposes consistent with the Family Code, then the department must release the CHRI from report number 16-005340, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor does not intend to use the CHRI in report number 16-005340 for purposes consistent with the Family

Code, then the department must withhold report number 16-005340 in its entirety pursuant to section 552.101 in conjunction with section 261.201. The department must make available to the requestor the CHRI from report numbers 16-006023 and 16-005878. With the exception of basic information, which you state has been released, the department may withhold the remaining information in report numbers 16-006023 and 16-005878 under section 552.108(a)(1) and 552.108(a)(2) of the Government Code, respectively.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 625060

Enc. Submitted documents

c: Requestor
(w/o enclosures)