ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2005

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2005-07042

Dear Mr. Schneider:

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# 229695.

The League City Police Department (the "department"), which you represent, received a request for the criminal history of a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Section 552.101 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. Section 261.201(a) of the Family Code provides as follows:

> (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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, 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). Because the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is 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(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021). You do not state that the department has adopted a rule that governs the release of this type of information. However, 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).

We note that chapter 411 of the Government Code constitutes "applicable state law" in this instance. Here, the requestor is the Texas Commission on Fire Protection (the "commission"). Section 411.1236 of the Government Code authorizes the release of criminal history record information to the commission for certain purposes and provides in relevant part:

> (a) The [commission] 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 person who is:
>
> (1) an applicant for or holder of a license issued under Chapter 419; or
>
> (2) an applicant for employment by or an employee of the commission.

Gov't Code § 411.1236(a). Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain criminal history record information from the Department of Public Safety is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). Accordingly, the commission is authorized to receive criminal history record information from a local criminal justice agency, such as the department. *See* Open Records Decision No. 655 (1997); *see also* Gov't Code §§ 411.083(b)(2), 411.087(a). "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* Gov't Code § 411.082(2). Thus, the submitted information contains "criminal history record information." However, a noncriminal justice agency that receives criminal history record information from a criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a purpose specified in the statute authorizing its receipt. *See* Gov't Code §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Therefore, the commission is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a purpose specified in section 411.1236(a) of the Government Code and for purposes consistent with the Family Code. *See* Gov't Code §§ 411.083(c), .087(b); *see also* Fam. Code § 261.201(a).

The commission states that it is seeking criminal history information "with respect to an applicant for certification (licensure) by [the commission]." Although it appears that the commission is seeking the information for a purpose authorized by section 411.1236(a), we cannot determine whether it intends to use the criminal history record information for purposes consistent with the Family Code. Consequently, if the department determines that the commission intends to use the criminal history record information for purposes consistent with the Family Code, we conclude that the department must make available to the commission the information from the submitted documents that shows 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 to disclosure under the Act). In that instance, the department must withhold the remainder of the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, if the department determines that the commission does not intend to use the criminal history record information for purposes consistent with the Family Code, the department must withhold the submitted information from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure), 440 at 2 (1986)

(construing predecessor statute); Fam. Code §§ 261.201(b)-(g) (listing entities authorized to receive 261.201 information).[1]

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

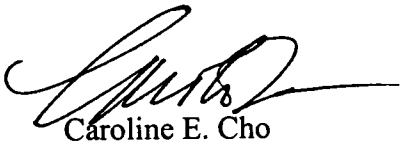
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

---

[1]As our ruling is dispositive, we need not address your remaining arguments against disclosure.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 229695

Enc. Submitted documents

c: Mr. John Jandt
Certification Officer
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286
(w/o enclosures)