



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2009

Ms. Eileen McPhee  
Carls, McDonald & Dalrymple  
Barton Oaks Plaza 2  
901 South Mopac Expressway, Suite 500  
Austin, Texas 78746

OR2009-07825

Dear Ms. McPhee:

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# 346894 (GT request number 150).

The Georgetown Police Department (the "department"), which you represent, received a request for calls for service and incident reports pertaining to criminal acts that occurred at specified addresses in March 2009. You state you have released most of the responsive information to the requestor. You claim the submitted reports are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses information that is protected by statute. You claim three of the submitted reports are confidential in their entirety under section 552.101 in conjunction with section 261.201 of the Family Code, which 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). You represent these reports were used or developed in investigations of child neglect under chapter 261 of the Family Code. *See id.* § 261.001(4) (definition of “neglect”). You further state the department has not adopted a rule that governs the release of this type of information. Based on your representations and our review, we agree these reports are within the scope of section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

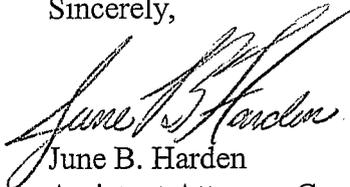
The requestor, however, is a representative of the Georgetown Housing Authority, who states the records will be used for the purpose of lease enforcement and possible eviction. Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides that “[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). In Open Records Decision No. 655 (1997), this office concluded this federal statute authorizes local housing authorities to obtain the criminal history record information (“CHRI”) of adult applicants and tenants. CHRI consists of “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.” Gov’t Code § 411.082(2). However, the federal law limits the purposes for which a public housing authority may request CHRI. It provides, among other things, that (1) public housing agencies may receive CHRI of adult applicants or tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law.” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 261.201 of the Family Code. *Cf. Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Thus, any CHRI of adult tenants of public housing that is contained within these reports must be released to this requestor in accordance with section 1437d(q)(1) of title 42 of the United States Code and Open Records Decision No. 655. *See also* 24 C.F.R. § 5.903 (describing public housing authorities’ access to criminal records). The remaining information contained in these reports must be withheld under section 552.101 of the Government Code in conjunction with section 261.201.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. You claim the marked portions of report #9008632 are protected by common-law privacy. After reviewing the report and your arguments, we agree the marked information is intimate and embarrassing and of no legitimate public interest. Therefore, the department must withhold the marked information under common-law privacy. The remaining portions of report #9008632 must be released.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/sdk

Ref: ID# 346894

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)