



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2009-13447

Dear Ms. Sandoval-Walker:

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# 356137.

The El Paso Police Department (the "department") received a request for incident reports pertaining to eight named individuals. You indicate that the department does not maintain any information pertaining to five of the named individuals.<sup>1</sup> You state you have released some of the information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the department submitted information that does not pertain to any of the named individuals. As such, this information, which we have marked, is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release non-responsive 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

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides in relevant part:

(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). Upon review of the submitted information, we conclude that report number 01-275189 constitutes a report of alleged or suspected abuse or neglect made under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” for purposes of section 261.201). Therefore, this report falls within the scope of section 261.201(a)(1). You do not inform us that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that the submitted information is confidential pursuant to section 261.201 of the Family Code and is generally excepted from public disclosure pursuant to section 552.101 of the Government Code. However, section 261.201 of the Family Code 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.*

We note that 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 [Department of Public Safety] any criminal history record information maintained by the [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:

(a) [a] person, agency, department, political subdivision, or other entity that is authorized by this subchapter 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.

Gov't Code § 411.087(a)(2). We note that "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 submitted information in this instance contains "criminal history record information." However, a criminal justice agency that receives criminal history record information 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 criminal history record information). Thus, to the extent the requestor in this instance is a "criminal justice agency," it is authorized to obtain criminal history record information from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2).

A "criminal justice agency" is defined in part as "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 of the Code of Criminal Procedure 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." Code Crim. Proc. art. 60.01(1).

In this case, the requestor is a New Mexico Children, Youth, and Families Department employee. We cannot determine whether she is a representative of a criminal justice agency or whether she intends to use the criminal history record information for a criminal justice purpose or for purposes consistent with the Family Code. Consequently, if the department determines that the requestor is a representative of a criminal justice agency for purposes of chapter 411 and she intends to use the criminal history record information for a criminal justice purpose and for purposes consistent with the Family Code, then the department must release information from report number 01-275189 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions; however, it must withhold the remainder of the information in this report from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

However, if the department determines that the requestor is either not a criminal justice agency for purposes of 411 or that she does not seek this information for a criminal justice purpose and for purposes consistent with the Family Code, the department must withhold report number 01-275189 from disclosure in its entirety pursuant to section 552.101 of the Government Code in conjunction with 261.201 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).

Section 552.101 also encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). The relevant part of section 58.007(c) 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 Subchapter B, D, and E.

Fam. Code § 58.007(c). 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). Upon review, we find that report number 06-174333 consists of law enforcement records of juveniles who engaged in delinquent conduct after September 1, 1997. Thus, the submitted information is confidential pursuant to section 58.007(c) of the Family Code.

The requestor states that the submitted information relates to an open investigation in the Las Cruces, New Mexico Child Protective Services Division. Section 58.007 also provides that "[l]aw enforcement records and files concerning a child may be inspected by a juvenile

justice agency as that term is defined by Section 58.101 [of the Family Code] and a criminal justice agency as that term is defined by Section 411.082, Government Code.” *Id.* § 58.007(e). Section 58.101(5) of the Family Code defines a “juvenile justice agency” as an agency that has custody or control over juvenile offenders. As stated above, section 411.082(3) of the Government Code defines a “criminal justice agency” as “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).

You do not indicate, and we are not otherwise able to determine, whether the requestor seeks access to the submitted information on behalf of a juvenile justice agency or a criminal justice agency for the purposes of section 58.007(e) of the Family Code. Nevertheless, if the department is able to determine that this particular requestor represents a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right of access to report number 06-174333 under section 58.007(e) of the Family Code. Otherwise, the requestor has no right of access to report number 06-174333, and the information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code as information made confidential by law. We note that a release of information made confidential by section 58.007(c) under the authority of section 58.007(e) would not constitute a disclosure of confidential information to the public for the purposes of section 552.352 of the Government Code or a selective disclosure of information to the public for the purposes of section 552.007. *See* Open Records Decision Nos. 680 at 7-8 (2003), 655 at 8-9 (1997); *compare* Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized, and receiving agency is not among statute’s enumerated entities).

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Moreover, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Upon review, we find a portion of the submitted information constitutes the compiled criminal history of an individual other than the

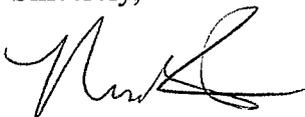
requestor. We also find this information is highly intimate or embarrassing information that is not of legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, if the department determines that the requestor is a representative of a criminal justice agency and intends to use report number 01-275189 for a criminal justice purpose and for purposes consistent with the Family Code, then the department must make available to the requestor information from this report that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The department must withhold the remaining information in report number 01-275189 under section 552.101 in conjunction with section 261.201. If, however, the department determines that the requestor is not a representative of a criminal justice agency and does not intend to use this information for a criminal justice purpose and for purposes consistent with the Family Code, then the department must withhold report number 01-275189 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold report number 06-174333 under section 552.101 in conjunction with section 58.007 unless this particular requestor has a right of access to that information under section 58.007(e) of the Family Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information 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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/dls

Ref: ID# 356137

Enc. Submitted documents

c: Requestor  
(w/o enclosures)