



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2009

Ms. Mary Azam  
Georgetown Police Department  
809 Martin Luther King, Jr. Street  
Georgetown, Texas 78626

OR2009-16929

Dear Ms. Azam:

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# 362785 (GT # 516).

The Georgetown Police Department (the "department"), received a request for call for service and incident reports pertaining to specified addresses during a specified period of time. You state you have released most of the responsive information to the requestor. You claim 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.

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 section 58.007 of the Family Code, which reads in relevant part:

(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.

Fam. Code § 58.007(c). In this instance, you assert two of the submitted reports are subject to section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2); *see also id.* §§ 58.007 (defining "delinquent conduct" for purposes of section 58.007). We note section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as an arrestee, suspect, or offender. In this instance, although juveniles were involved in one of the reports you have marked under section 58.007, none are listed as arrestees, suspects, or offenders. Thus, this report is not subject to section 58.007(c). However, we find report number 9036799, which we have marked, is a law enforcement record of a juvenile. It does not appear that any of the exceptions in section 58.007 of the Family Code apply to this report. Therefore, report number 9036799 is generally confidential pursuant to section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, 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, 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). You state the reports you have marked were used or developed in investigations of child abuse or neglect under section 261.201 of the Family Code. However, one of the reports you have marked pertains to an assault in which the victim was an adult. Thus, this report is not confidential under section 261.201(a) and may not be withheld on such basis. However, we find report numbers 9037046 and 9037650, which we have marked, consist of files, reports, or records used or developed in investigations under chapter 261. Therefore, these reports are within the scope of section 261.201(a)(2) of the Family Code. *Id.* § 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of

the Family Code); *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). You state the department has not adopted a rule that governs the release of this type of information. Accordingly, report numbers 9037046 and 9037650 are generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, that the requestor is a representative of the Georgetown Housing Authority, who states the requested documents will be “used for the purposes of lease enforcement and possible eviction.” Section 1437d(q)(1)(A) of chapter 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). Section 1437d(q)(1)(C) provides that “[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” *Id.* § 1437d(q)(1)(C). In Open Records Decision No. 655 (1997), this office concluded these federal statutes authorize local housing authorities to obtain the criminal history record information (“CHRI”) of adult and juvenile 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 and juvenile 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), (C); 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) 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). However, as previously discussed, section 1437d(q)(1)(C) allows a housing authority to obtain access to juvenile CHRI “only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” 42 U.S.C. § 1437d(q)(1)(C). Juvenile justice information is confidential but may be released to “any entity to which [the Texas Department of Public Safety (“DPS”)] may grant access to adult criminal records as provided by section 411.083 of the Government Code.” Fam. Code § 58.106(a)(2). Section 411.083(b)(2) of the Government Code states that DPS is required to provide CHRI to a non-criminal justice agency authorized to receive CHRI pursuant to federal statute, executive order, or state statute. Gov’t Code § 411.083(b)(2). Because housing authorities are authorized to obtain adult CHRI under sections 1437d(q)(1)(A) and 411.083(b)(2), they

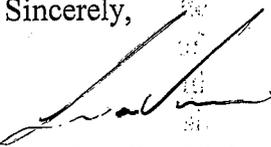
are also authorized to obtain similar information regarding juveniles. The housing authority, however, may only obtain and use juvenile information in accordance with section 1437d(q)(1)(A). *See also id.* § 411.084(2)(B) (stating CHRI may only be disclosed or used as authorized or directed by another statute). Thus, any CHRI of applicants or tenants of public housing that is contained within the reports marked under sections 58.007 and 261.201 of the Family Code must be released to this requestor in accordance with section 1437d(q)(1) of chapter 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 remainder of these reports must be withheld under section 552.101 of the Government Code.

In summary, the department must release from the reports marked under sections 58.007(c) and 261.201 of the Family Code the CHRI of applicants or tenants of public housing in accordance with section 1427d(q)(1) of chapter 42 of the United States Code and Open Records Decision No. 655.<sup>1</sup> The remainder of these reports must be withheld under section 552.101 in conjunction with sections 58.007 and 261.201 of the Family Code. 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

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<sup>1</sup>We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from a requestor without such a right of access.

Ref: ID# 362785

Enc. Submitted documents

c: Requestor  
(w/o enclosures)