



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 20, 2010

Mr. Samuel J. Aguirre  
Assistant City Attorney  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

OR2010-07295

Dear Mr. Aguirre:

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# 380017.

The San Marcos Police Department (the "department") received a request from an investigator with the Texas Department of Family and Protective Services (the "DFPS") for records involving two named individuals. You claim that portions of the submitted information 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 section 261.201 of the Family Code, which provides as follows:

(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 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). We note that the department is an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). The submitted information pertains to an investigation of suspected child abuse and is, therefore, within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011). Thus, this information is generally confidential under section 261.201 of the Family Code. We note, however, in this instance the DFPS is the requestor. Thus, section 411.114 of the Government Code is applicable to the submitted information. Section 411.114(a) of the Government Code states in pertinent part:

(2) The [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by the [DPS] that relates to a person who is:

(I) a person who is the subject of a report the [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the statutory definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person who is the subject of the report is not also the victim of the alleged conduct[.]

(4) Subject to Section 411.087, the [DFPS] is entitled to:

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B): 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." *Id.* § 411.082(2). We note that one of the named individuals is listed as a suspect in the submitted report. Thus, the requestor is authorized to obtain CHRI from the department. *Id.* § 411.114. Consequently, the department must release the 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, but must withhold the remaining information under 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).<sup>1</sup> As our ruling is dispositive, we need not address your argument against disclosure.

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/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 another requestor.

Ref: ID# 380017

Enc. Submitted documents

c: Requestor  
(w/o enclosures)