



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 2, 2010

Ms. Sheri Dye
Assistant Criminal District Attorney
Bexar County Criminal District Attorney's Office
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030.

OR2010-07985

Dear Ms. Dye:

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# 381300.

The Bexar County Criminal District Attorney's Office (the "district attorney") received a request for information relating to a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. This exception encompasses information that other statutes make confidential. Section 261.201 of the Family Code provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

purposes consistent with [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find that the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers that were used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. Thus, the submitted information is generally subject to section 261.201 of the Government Code. *See id.* § 261.001(1) (defining “abuse,” for purposes of Fam. Code ch. 261, as including offense of aggravated sexual assault under Penal Code § 22.021); *see also* Penal Code § 22.011 (c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). 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).

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 the following:

(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.

Id. § 411.087(a)(2). We note “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 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, if the requestor in this instance is a “criminal justice agency,” it is authorized to obtain criminal history record information from the district attorney pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

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 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).

The requestor is a representative of the Ohio Department of Rehabilitation and Correction (the “ODRC”). Although the ODRC appears to be engaged in the administration of criminal justice for purposes of chapter 411 and indicates it intends to use the criminal history record information for a criminal justice purpose, we cannot determine whether the requestor intends to use the information for purposes consistent with the Family Code. Consequently, if the district attorney determines that the ODRC intends to use the criminal history record information for purposes consistent with the Family Code, then the district attorney 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 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). If the district attorney determines the ODRC does not intend to use the criminal history record information for purposes consistent with the Family Code, then the district attorney must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with

section 261.201 of the Family Code.² See Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

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, 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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 381300

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.