



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2010

Ms. Rebecca H. Brewer
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2010-08398

Dear Ms. Brewer:

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# 382157.

The Wylie Police Department (the "department"), which you represent, received a request for information regarding a specified incident. 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.

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 protected by 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 Chapter 552, Government Code, and may be disclosed only for 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 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). The submitted information was used in the investigation of an alleged sexual assault of a child. *See id.* § 261.001(1)(E) (definition of “abuse” includes sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c) (defining “child” for purposes of Penal Code section 22.021). Upon review, we find the submitted information falls within the scope of section 261.201 of the Family Code. Information pertaining to an abuse or neglect investigation is confidential under section 261.201; however, section 261.201 allows for the disclosure of this type of information to certain entities for “purposes consistent with [the Family Code] and applicable federal or state law.” *See id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” for purposes of section 261.201.

The requestor is an investigator with the Texas Department of Licensing and Regulation (the “TDLR”). Sections 411.093 and 411.122 of the Government Code both provide that the TDLR is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who is an applicant for a license issued by the TDLR. Gov’t Code §§ 411.093(a), 411.122(a)(1), 411.122(d)(10). Section 411.087 of the Government Code provides that an agency that is entitled to obtain CHRI from the DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087(a)(2). CHRI 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, when read together, sections 411.087, 411.093, and 411.122 of the Government Code may grant the TDLR a right of access to CHRI in the submitted reports.

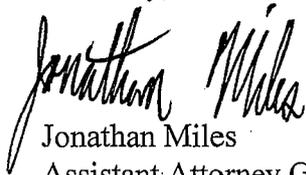
The requestor states that she is seeking the information at issue pursuant to a criminal background check on an individual who has applied for a license with the TDLR. Accordingly, if the department determines that release of the information in the submitted information is consistent with the purposes of the Family Code, then, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines that release of the information in the submitted information is not consistent with the purposes of the Family Code, then it must withhold the submitted information in its

entirety under section 552.101 in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we do not address your arguments to withhold the information at issue.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 382157

Enc. Submitted documents

c: Requestor
(w/o enclosures)