



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2010

Mr. Rick Waller
Whitehouse Police Department
P.O. Box 776
Whitehouse, Texas 75791

OR2010-08730

Dear Mr. Waller:

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# 382695.

The Whitehouse Police Department (the "department") received a request for information pertaining to a specified incident and named individual. 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 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). The submitted information was used or developed in an investigation of an alleged injury to a child. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Thus, we find the submitted information is within the scope of section 261.201. 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.” Fam. Code § 261.201(a).

In this instance, the requestor is an investigator with the Board of Nursing (the “board”). Section 411.125 of the Government Code provides:

The [board] is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who:

- (1) is an applicant for or holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov’t Code § 411.125. 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.

Id. § 411.087(a)(2). “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, under section 411.125, the board may have a right of access to criminal history record information about the named individual contained in the department’s records.

Accordingly, if the department determines that release is consistent with the purposes of the Family Code and the offender in the submitted information is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then the requestor is authorized to obtain the criminal history record information contained in the submitted information. The remaining information, however, must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. If, however, the department determines that release is not consistent with the purposes of the Family Code or the offender does not meet the criteria of section 411.125(a), then the board does not have a right of access to the criminal history record information, and the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/em

Ref: ID# 382695

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹Because the requestor may have a right of access to some of the submitted information, the department should request another ruling if it receives a request from another requestor for this same information. See Gov't Code §§ 552.301(a), .302.