



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2011

Ms. Teresa J. Brown  
Senior Open Records Specialist  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086

OR2011-06252

Dear Ms. Brown:

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# 416853 (Plano ORR #FILT021511).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual.<sup>1</sup> 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. This section encompasses confidentiality provisions such as section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

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<sup>1</sup>You state that the department sought and received clarification from the requestor regarding the scope of the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (where governmental body seeks clarification or narrowing of request for information, ten-day period to request attorney general opinion is measured from the date request is clarified or narrowed).

(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 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 report indicates that it was developed during an investigation by the department into suspected child abuse. *See id.* § 261.001(1)(E) (“abuse” for purposes of chapter 261 of the Family Code includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11(a) (defining “child” for purposes of indecency with a child as person under 17 years of age). Therefore, we find this report is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the report at issue is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor is a recruiter for the United States Air Force (the “Air Force”) who states the named individual is a potential Air Force enlistee. The United States Department of Defense (the “DoD”) is authorized to perform background investigations of persons seeking appointment, retention, or assignment to a position of public trust or a critical or sensitive position while employed by the government. 5 U.S.C. § 9101(b)(1)(D); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Air Force has a right to the criminal history record information (“CHRI”) of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(8) (DoD includes the Department of the Air Force). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

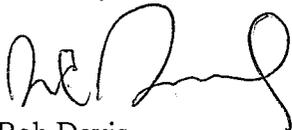
Federal law provides that the Air Force’s right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any

other provision of law . . . of any State"). We conclude that the Air Force's right of access under federal law preempts confidentiality under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. See *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); see also *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides that the Air Force's right of access is contingent on receiving written consent from the individual under investigation for the release of such CHRI. See 5 U.S.C. § 9101(c). In this instance, we have no indication that the requestor has provided a signed authorization from the named individual for the release of the report at issue. Therefore, if the named individual has signed a written consent of release for his information, the department must release the CHRI from the report to the Air Force and withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the Air Force has not received a written release, the department must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup>

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

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<sup>2</sup>We note because the requestor has a potential 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# 416853

Enc. Submitted documents

c: Requestor  
(w/o enclosures)