



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
William B. Travis Building
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2011-13536

Dear Ms. Rangel:

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# 430355.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for the police report and probable cause affidavit pertaining to a specified arrest. 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. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the 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). Upon review, we find the submitted information was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 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). Therefore, the submitted information is generally confidential under section 261.201(a) of the Family Code. However, section 261.201(a) also provides 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).

We note chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is an enforcement investigator with the Texas Department of Licensing and Regulation (the “TDLR”). Sections 411.093 and 411.122 of the Government Code both provide 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), .122(a)(1), .122(d)(10). Section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from 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 incident report.

The requestor does not state, and we are not able to determine, whether the information the requestor seeks relates to an applicant for a license issued by the TDLR. Thus, if the sheriff determines the information the requestor is seeking relates to an applicant for a license issued by the TDLR and release of the information in the submitted report 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 sheriff 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. In that instance, the sheriff must withhold the remaining information in the submitted report under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the sheriff determines the information does not relate to a license applicant or release of the information in the submitted report is not consistent with the purposes of the Family Code, the sheriff 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 remaining argument under common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *Center Point Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 430355

Enc. Submitted documents

c: Requestor
(w/o enclosures)