



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 27, 2011

Ms. Jessica Sangsvang
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-18999

Dear Ms. Sangsvang:

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# 440482 (FW Request Nos. W012236 and W012306).

The City of Fort Worth (the "city") received a request for a specified incident report and a second request for all calls or incident reports at a specified address. You state the city has redacted social security numbers pursuant to section 552.147 of the Government Code.¹ 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 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 information protected by section 261.201 of the Family Code, which provides in relevant part:

[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

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). You represent the submitted information was used or developed in the city's investigation of alleged abuse of a child. *See id.* § 261.001(1)(A) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). Based on your representations and our review, we find this information is within the scope of section 261.201 of the Family Code. In this instance, however, one of the requestors is the parent of the child victim named in the report. Further, the parent is not the individual alleged to have committed the alleged abuse. *See* Fam. Code § 261.201(k). Accordingly, the city may not use section 261.201(a) to

withhold the submitted information from the parent requestor. *Id.* However, the city must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

With respect to the parent requestor, although section 261.201(a) may not be used to withhold the submitted information from her, section 261.201(1)(3) states that the identity of the reporting party must be withheld. Fam. Code § 261.201(1)(3). Accordingly, the city must withhold the information we have marked under section 261.201(1)(3).² Additionally, section 261.201(1)(2) states that any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will consider your remaining argument.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “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.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement in the criminal justice system. Gov’t Code § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with the criminal justice system). Upon review, we find the information we have marked constitutes confidential CHRI, which the city must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

²As our ruling for this information is dispositive, we need not address your argument against its disclosure.

The remaining information that you have marked under section 411.083 does not constitute confidential CHRI for the purposes of chapter 411 and may not be withheld on that basis.

In summary, the city must withhold the incident report from the second requestor under section 552.101 in conjunction with section 261.201 of the Family Code. With respect to the first requestor, the city must withhold the identity of the reporting party, which we have marked, under section 552.101 in conjunction with section 261.201 of the Family Code and the criminal history record information, which we have marked, under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. The remaining information must be released to the first requestor pursuant to section 261.201(k).

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/sdk

Ref: ID# 440482

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)