



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2012

Mr. Bruce P. Sadler
Assistant District Attorney
47th Judicial District of Texas
501 South Fillmore Suite 5A
Amarillo, Texas 79101-2449

OR2012-01496

Dear Mr. Sadler:

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# 444835.

The District Attorney for the 47th Judicial District (the “district attorney”) received a request for information related to a specified criminal case, including the grand jury transcript. You state the district attorney maintains no responsive records of the grand jury proceedings in the case.¹ You claim information responsive to the request is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.²

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

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²This letter ruling assumes the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any information that is substantially different from the submitted information. *See Gov’t Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Code § 552.101. This exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in part:

(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 [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). We find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 or in providing services as a result of an investigation, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code as including offense of indecency with a child under Penal Code § 21.11); Penal Code § 21.11(a) (defining “child” for purposes of offense of indecency with a child). As you do not indicate the district attorney has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201(a) of the Family Code.

In this instance, however, the requestor identifies himself as an investigator for the Office of the State Public Defender of the State of Colorado (the “public defender”). Section 261.201 of the Family Code also provides that information subject to subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” for purposes of section 261.201(a). Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] any criminal history record information maintained by the [DPS] about a person.” *See Gov’t Code* § 411.089(a). Section 411.087(a) of the Government Code provides in part:

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] 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). For purposes of sections 411.089 and 411.087, criminal history record information (“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.” *Id.* § 411.082(2). Although the submitted records contain CHRI, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, if the public defender represents a “criminal justice agency,” then he is authorized to obtain CHRI from the district attorney pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and only for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

Section 411.082 of the Government Code defines “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” Gov’t Code § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Crim. Proc. Code art. 60.01(1).

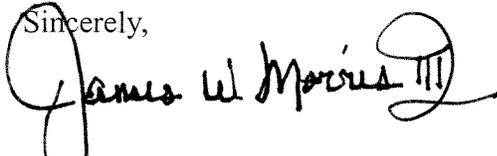
Although the public defender appears to be engaged in the administration of criminal justice for purposes of chapter 411 of the Government Code, and it appears he intends to use the requested CHRI for a criminal justice purpose, we are unable to determine whether he intends to use the information for purposes consistent with the Family Code. Nevertheless, if the district attorney determines the public defender intends to use the CHRI for purposes consistent with the Family Code, then the district attorney must release the information otherwise subject to section 261.201(a) of the Family Code that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that event, the district attorney must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. But if the district attorney determines the public defender does not intend to use the CHRI for purposes consistent with the Family Code, then the district attorney must withhold the submitted information in its

entirety under section 552.101 in conjunction with section 261.201(a).³ See Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). As we are able to make these determinations, we do not address the other exceptions you claim. See Open Records Decision No. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 444835

Enc: Submitted documents

c: Requestor
(w/o enclosures)

³We note that because section 261.201(a) protects all "files, reports, records, communications, audiotapes, videotapes [and] working papers" related to an investigation of alleged or suspected child abuse or neglect, the district attorney must not release basic front-page information in such cases.