



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 15, 2012

Mr. David Walker  
County Attorney  
Montgomery County  
207 West Phillips, 1<sup>st</sup> Floor  
Conroe, Texas 77301

OR2012-03838

Dear Mr. Walker:

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# 448473.

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for four offense reports related to a named individual. You state some information has been or will be released to the requestor. You claim submitted report number 94A007752 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 public 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 other statutes. Section 261.201 of the Family Code provides as follows:

(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 information relates to an investigation of alleged or suspected child abuse conducted by the sheriff's office. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault and 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 person under 17 years of age). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, section 261.201 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 a representative of the United States Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives. Section 411.089(a) of the Government Code provides, "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (the "DPS")] any criminal history record information ["CHRI"] maintained by the [DPS] about a person." Gov't Code § 411.089(a). Additionally, 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] [CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

*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." *Id.* § 411.082(2). The submitted information contains CHRI. A representative of a criminal justice agency is authorized to obtain CHRI from the sheriff's office pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See id.* §§ 411.083(c), .087(a)(2), .087(b); *see also* Open Records Decision No. 655 (1997)

(discussing limitations on release of criminal history record information). Further, the release of CHRI in this instance must be for a purpose consistent with the Family Code. *See* Fam. Code § 261.201(a).

Section 411.082 defines a “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 to it 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).

In this instance, the requestor is a representative of a criminal justice agency and indicates the information is requested in furtherance of an ongoing criminal investigation. We are unable to determine whether the requestor intends to use the information for purposes consistent with the Family Code. Therefore, if the sheriff’s office determines the information is requested for a criminal justice purpose and the requestor intends to use the submitted criminal history record information for purposes consistent with the Family Code, we conclude the sheriff’s office must release the information otherwise subject to section 261.201 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 instance, the sheriff’s office must withhold the remainder of the information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the sheriff’s office determines the requestor does not seek this information for a criminal justice purpose and for purposes consistent with the Family Code, the sheriff’s office must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *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).<sup>1</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

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining argument under section 552.101 of the Government Code in conjunction with common-law privacy.

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,

A handwritten signature in cursive script that reads "Jessica Marsh". The signature is written in black ink and is positioned to the left of the typed name.

Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 448473

Enc. Submitted documents

c: Requestor  
(w/o enclosures)