



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-03841

Dear Ms. Graham:

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# 447725.

The Mesquite Police Department (the “department”) received a request for information pertaining to two specified reports. You state the department will release some of the requested information to the requestor. You also state the department will redact driver’s license numbers from the responsive information pursuant to section 552.130(c) of the Government Code,¹ and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim the remaining 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

¹On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

²Section 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. *See id.* § 552.147.

Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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 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.

...

(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:

...

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

Fam. Code § 261.201(a), (k), (l)(3). You state the submitted reports were used or developed in an investigation of alleged family violence. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Based on your representations and our review, we find report number 11-048418 is generally confidential under section 261.201 of the Family Code. We note, however, the requestor is the parent of the child victim listed in report 11-048418 and is not alleged to have committed

the suspected abuse or neglect. In this instance, the department may not use section 261.201(a) to withhold report number 11-048418 from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party shall be withheld from disclosure. *Id.* § 261.201(l)(3). Accordingly, the department must withhold the identity of the reporting party in report number 11-048418, which we have marked, under section 552.101 in conjunction with section 261.201(l)(3). Upon review, we find report number 11-048408 reflects the department investigated an alleged family violence assault between two adults. You have not provided any explanation of, nor does the incident report reflect, how the incident report pertains to a report of alleged or suspected child abuse or neglect, or was used or developed in an investigation of alleged or suspected child abuse or neglect. Thus, you have failed to demonstrate that report number 11-048408 is confidential under section 261.201 of the Family Code. Consequently, the department may not withhold report number 11-048408 under section 552.101 of the Government Code on this basis.

You also seek to withhold portions of report number 11-048408 under section 552.101 of the Government Code, which 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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12; *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the 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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, 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 understand the information you marked to be CHRI the department obtained from the National Crime Information Center or the Texas Crime Information Center. Thus, we agree the department must withhold the marked information from disclosure under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

In summary, the department must withhold the identity of the reporting party, which we have marked, in report number 11-048418 under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code, as well as the information you

have marked in report number 11-048408 under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The remaining information must be released.³

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 447725

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released consists of confidential information to which the requestor has a right of access. See Fam. Code § 261.201(k). Therefore, if the department receives another request for this same information from a different requestor, the department should again seek a decision from this office. See Gov't Code §§ 552.301(a), .302.