



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702

OR2012-05107

Dear Ms. Villarreal:

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# 450207 (Waco Ref. No. LGL-12-118).

The City of Waco (the "city") received a request for a specified police report involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. This exception encompasses information protected by other statutes, such as 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 and falls within the scope of section 261.201. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 of the Penal Code); *see also* Penal Code § 22.011 (defining “child” for purposes of sexual assault of a child as person under 17 years of age). Thus, this information is generally confidential under section 261.201 of the Family Code. However, we note the requestor is a representative of the Texas Department of Family and Protective Services (“DFPS”). Thus, section 411.114 of the Government Code is applicable to the submitted information. Section 411.114(a) of the Government Code states in pertinent part:

(2) The [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report the [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, the [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov’t Code § 411.114(a)(2)(I), (4)(B). CHRI consists of “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). We note the named individual is listed as a suspect in the

submitted report. Thus, the requestor is authorized to obtain CHRI from the city regarding the individual who is the subject of the requested report. *Id.* § 411.114. Although you claim this report is excepted under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). We note a specific statutory right of access prevails over the common law. *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); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Consequently, the city must release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Accordingly, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the city must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 450207

Enc. Submitted documents

c: Requestor
(w/o enclosures)