



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2013

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

OR2013-04423

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# 483216.

The Mesquite Police Department (the "department") received a request for all records pertaining to a specified incident. You claim some of 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 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 other statutes make confidential. Section 261.201 provides in relevant 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 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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find the submitted information was developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family 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 person younger than 17 years of age). We note the requestor is a parent of the child victim named in submitted information, and the requestor is not accused of having committed the alleged abuse. Therefore, pursuant to section 261.201(k), the submitted information may not be withheld from the requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). We note, however, section 261.201(l)(2) states any information that is excepted from required public disclosure under the Act or other law may still be withheld from disclosure. *See id.* § 261.201(l)(2). Accordingly, we will address your remaining argument against disclosure of the submitted information.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”). CHRI

generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") 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 NCIC network or other states. See 28 C.F.R. § 20.21. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. See 28 C.F.R. § 20.21(c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.") 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. You state the information you have marked under section 552.101 of the Government Code was obtained from the NCIC and TCIC networks. Based on your representations, we agree the marked information constitutes CHRI and must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must release the remaining information.¹

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

¹We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.201(k). Therefore, if the department receives another request for this information from an individual other than the requestor, the department must again seek a decision from this office.

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 "Eamon Briggs".

Eamon D. Briggs
Assistant Attorney General
Open Records Division

EDB/eb

Ref: ID# 483216

Enc. Submitted documents

c: Requestor
(w/o enclosures)