



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2013

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2013-08663

Dear Mr. Bounds:

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# 489698 (CCPD File Number CA1b4).

The Corpus Christi Police Department (the "department") received a request for all calls-for-service reports and police reports involving a named individual at a specified address during a specified time period. You state the department is making some information available to the requestor. 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 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(a) of the Family Code provides 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.

Fam. Code § 261.201(a). You state the submitted information relating to report 1201110092, which you have marked, relates to an investigation of alleged or suspected child abuse conducted by the department. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of Family Code), 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 disabilities of minority removed for general purposes). Upon review, we find this information is subject to chapter 261 of the Family Code. You state the department has not adopted a rule that governs the release of this type of information. Thus, we agree the information at issue is generally confidential pursuant to section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree the information you have marked in report 1203110118 is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must generally withhold the information you have marked in report 1203110118 under section 552.101 in conjunction with common-law privacy.

However, we note the requestor in this instance is a representative of the Corpus Christi Housing Authority (the “housing authority”). Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides, “[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). In Open Records Decision No. 655 (1997), this office concluded this federal statute authorizes local housing authorities

to obtain the criminal history record information ("CHRI") of adult applicants and tenants. *See* ORD 655 at 4. 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." Gov't Code § 411.082(2). However, the federal law limits the purposes for which a public housing authority may request CHRI. The federal law provides, among other things, CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI "[n]otwithstanding any other provision of law." 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 261.201 of the Family Code. *Cf. Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law).

However, the requestor does not state whether the submitted information relating to report 1201110092 will be used for purposes of applicant screening, lease enforcement, and eviction. Thus, if the department determines the requestor will use the submitted information relating to report 1201110092 for purposes of applicant screening, lease enforcement, and eviction, any CHRI of applicants or tenants of public housing that is contained within the information at issue must be released to this requestor in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and Open Records Decision No. 655. *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records). The remainder of the submitted information relating to report 1201110092 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the requestor does not intend to use the submitted information relating to report 1201110092 for purposes of applicant screening, lease enforcement, and eviction, then the department must withhold the submitted information relating to report 1201110092 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Additionally, although the requestor appears to be acting on behalf of the housing authority, in this instance, the information at issue in report 1203110118 does not constitute or contain any CHRI. Therefore, the department is not required to release any of the information you have marked in report 1203110118 under section 1437d(q)(1)(A) of title 42 of the United States Code. Instead, the department must withhold the information you have marked in report 1203110118 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the department determines the requestor will use the submitted information relating to report 1201110092, which you have marked, for purposes of applicant screening, lease enforcement, and eviction, any CHRI of applicants or tenants of public housing that is contained within the information at issue must be released to this requestor in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and Open Records Decision No. 655 and the remainder of the submitted information relating to report 1201110092

must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the requestor does not intend to use the submitted information relating to report 1201110092 for purposes of applicant screening, lease enforcement, and eviction, then the department must withhold the submitted information relating to report 1201110092 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information you have marked in report 1203110118 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 489698

Enc. Submitted documents

c: Requestor
(w/o enclosures)