



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2013

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903-5814

OR2013-21229

Dear Ms. Bowling:

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# 507935.

The City of San Angelo (the "city") received a request for the incident report in case number 13-10099, related to a specified arrest. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-16428 (2013). In Open Records Letter No. 2013-16428, we determined that, with the exception of basic information, which must be released, the city may withhold the incident report at issue under section 552.108 of the Government Code.

The current requestor is a representative of the San Angelo Public Housing Authority (the "housing authority") and may have a right of access to some of the information at issue.

¹You raise section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and section 552.108 of the Government Code. We note section 552.101 does not encompass other exceptions to disclosure under the Act.

Thus, the circumstances have changed because the requestor here may have a right of access and the city may not rely on Open Records Letter No. 2013-16428 as a previous determination. Therefore, we will address your arguments.

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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(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). You assert the submitted information is confidential pursuant to section 261.201(a). Upon review, we find portions of the submitted information, which we have marked, are subject to chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also* 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). You have not indicated the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find the information we have marked is confidential under section 261.201(a) of the Family Code.² Consequently, the department must withhold the marked information from the requestor based on section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, you have failed to demonstrate how the remaining information is confidential under section 261.201. Consequently, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

²In light of this conclusion, we need not consider your section 552.108 claim for this information.

We consider your section 552.108 claim for the remaining information. Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the remaining information relates to a pending criminal investigation, and the release of the information at this time would be harmful to the case. Based upon these representations, we find the city has demonstrated that release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Accordingly, with the exception of basic information, section 552.108(a)(1) of the Government Code applies to the remaining information.

However, as noted above, the requestor is a representative of the housing authority. The Texas Department of Public Safety (the “DPS”) is required to provide criminal history record information (“CHRI”) to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. Gov’t Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded that a local housing authority is a noncriminal justice agency authorized by federal statute to obtain the CHRI of adult and juvenile tenants. Open Records Decision No. 655 at 4 (1997). The federal Housing Opportunity Program Extension Act of 1996 authorizes housing authorities to obtain criminal records of applicants and tenants. Section 1437d(q)(1)(A) of chapter 42 of the United States Code provides that “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, public housing for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A).

Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS also is authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency].” Gov’t Code § 411.087(a)(2). Thus, a housing authority also is authorized to obtain CHRI from a local criminal justice agency. *See*

ORD 655 at 4; *see also* Gov't Code §§ 411.083(b)(2), .087(a). 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).

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 552.108 of the Government 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).

Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A).

However, we cannot determine if the requestor is seeking the release of CHRI of applicants or tenants for purposes of applicant screening, lease enforcement, or eviction. The information subject to section 261.201(a) does not consist of CHRI. Thus, section 1437d(q)(1)(A) does not require the city to release any of the marked information subject to section 261.201(a). As for the remaining information, if such information relates to an applicant or tenant of the housing authority and the city determines the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, we conclude the city must release information to this requestor that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, if the city determines the submitted information does not relate to an applicant or tenant of the housing authority or that the housing authority does not intend to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then, with the exception of basic information, the city may withhold the information under section 552.108(a)(1) of the Government Code. In either case, the city must withhold the marked information in its entirety under section 552.101 in conjunction with section 261.201(a) of the Family Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 507935

Enc. Submitted documents

c: Requestor
(w/o enclosures)