



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2013

Ms. Rachel Saucier  
Legal Assistant  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2013-21353

Dear Ms. Saucier:

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# 507967 (PD ORR 2013-499).

The Georgetown Police Department (the "department") received a request for the offense reports relating to two specified cases. You state the department does not have information responsive to a portion of the request.<sup>1</sup> You claim 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

[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

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 indicate the submitted information was used or developed in investigations of alleged child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes aggravated sexual assault under Penal Code section 22.021). Based on your assertion and our review, we find the submitted information is generally confidential under section 261.201 of the Family Code. Section 261.201(a), however, also provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a).

We note chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is an investigator with the Texas Department of Licensing and Regulation (the “TDLR”). Sections 411.093 and 411.122 of the Government Code both provide the TDLR is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who is an applicant for a license issued by the TDLR. Gov’t Code §§ 411.093(a), .122(a)(1), .122(d)(10). Section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087(a)(2). CHRI is defined as “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.” *See id.* § 411.082(2). Thus, when read together, sections 411.087, 411.093, and 411.122 of the Government Code may grant the TDLR a right of access to CHRI in the submitted information.

The requestor states he is conducting a criminal background check on an individual who has applied for licensure with the TDLR. Accordingly, if the department determines that release of the information at issue is consistent with the purposes of the Family Code, then, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the department must release the information that shows the types of allegations made and whether there was an

arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. See *Center Point 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); *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); Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). The department must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines release of the information at issue is not consistent with the purposes of the Family Code, then it must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 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](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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/akg

Ref: ID# 507967

Enc. Submitted documents

c: Requestor  
(w/o enclosures)