



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2014

Ms. Teresa J. Brown
Senior Open Records Assistant
Open Records
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-02806

Dear Ms. Brown:

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# 514027 (BART112113).

The Plano Police Department (the "department") received a request for information pertaining to a named individual. You claim the requested 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 of the Government Code encompasses section 261.201(a) of the Family Code, which provides:

(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). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining “abuse” for purposes of ch. 261). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given this assumption, we conclude the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, section 261.201 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. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information [“CHRI”] maintained by the [Department of Public Safety] about a person.” Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing the department shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] [CHRI] maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). We note 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). A criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor in this instance represents a “criminal justice agency,” the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Fam. Code § 261.201(a); Gov’t Code §§ 411.083(c), .087(a)(2).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Code Crim. Proc. art. 60.01(1).

The requestor in this instance is a representative of the Louisiana State Police Sex Offender and Child Predator Registry. Although it appears the requestor is engaged in the administration of criminal justice, we cannot determine whether she intends to use the CHRI for a criminal justice purpose. Consequently, if the department determines the requestor intends to use the CHRI for a criminal justice purpose and release of the information is consistent with chapter 261 of the Family Code, we conclude the department must make available to the requestor the CHRI from the submitted information that shows the type of allegation made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions. Although you raise section 552.101 of the Government Code in conjunction with common-law privacy for this information, we note a 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); *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). In that event, the department must withhold any remaining information under section 552.101 in conjunction with section 261.201 of the Family Code. However, if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose or release of the information is not consistent with chapter 261 of the Family Code, the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code.

In summary, the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, the department must release portions of the submitted information that show the type of allegation made and whether there were arrests, informations, indictments, detentions, convictions, or other formal charges and their dispositions if the department determines release of the information is consistent with chapter 261 of the Family Code and the requestor intends to use the information for a criminal justice purpose. If the department determines release of the information is not consistent with chapter 261 of the Family Code or the requestor does not intend to use the information for a criminal justice purpose, the department 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 514027

Enc. Submitted documents

cc: Requestor
(w/o enclosures)