



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2014

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-10258

Dear Ms. Henry:

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# 526409 (ORR# HEIC40314).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident report involved a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 section 261.201(a) of the Family Code, which provides as follows:

(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 state the submitted information was used or developed in an investigation of alleged child abuse. Based on your representations and our review of the information at issue, we agree the submitted information is subject to section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also id.* § 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 the disabilities of minority removed for general purposes). 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 that assumption, we conclude the submitted information is generally confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (addressing predecessor statute).

We note, however, the requestor is a representative from the Defense Office of Hearings and Appeals (the “DOHA”) of the United States Department of Defense (the “DoD”) and she seeks the requested information for the purpose of determining the named individual’s eligibility for access to classified information. The DOHA has a right of access to the criminal history record information (“CHRI”) of state and local criminal justice agencies when it receives the consent of the individual being investigated for release of such information. *See 5 U.S.C. § 9101(b)(1)(A), (c); see also id. § 9101(a)(6)(A)* (DoD is a covered agency for purposes of section 9101). CHRI is defined as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release” but does not include “identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system” or “records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.” 5 U.S.C. § 9101(a)(2).

The requestor has submitted written consent from the named individual for the release of that individual’s CHRI. Accordingly, we conclude the requestor has a right of access to CHRI held by the department regarding the named individual. Furthermore, federal law provides the DOHA’s right of access to CHRI preempts state confidentiality provisions. *Id.*

§ 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law . . . of any State”). In addition, we conclude such a right of access under federal law preempts the department’s claims under Texas law. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law); *see also Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Therefore, the department must release the CHRI relating to the named individual to the requestor and withhold the remaining information under section 552.101 of the Government Code 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 526409

Enc. Submitted documents

c: Requestor
(w/o enclosures)