



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 18, 2016

Ms. Michelle Buendia
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2016-03901

Dear Ms. Buendia:

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# 601917 (ORR# 2015-22046).

The Dallas Police Department (the "department") received a request for records pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. This section encompasses information protected by other statutes, such as former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Former section 51.14(d) was

¹You acknowledge, and we agree, the department did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the department's claims.

continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided, in relevant part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). A “child” is defined as a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find the information we have marked pertains to juvenile conduct that occurred prior to January 1, 1996. Further, the requestor does not fall within the categories in former section 51.14(d) under which inspection of the records would be permitted. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Therefore, we find former section 51.14(d) is applicable to the submitted information. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct engaged in by child). Accordingly, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.²

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in 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

²As our ruling is dispositive, we do not address your argument to withhold this information.

(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.

Id. § 261.201(a). Upon review, we find the information we have marked consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. Because you do not indicate the department has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given that assumption, the information at issue is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, section 261.201 of the Family Code provides that information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.” Gov’t Code § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices). Additionally, section 411.087 of the Government Code provides in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or subchapter E-1 to obtain from the [DPS] [CHRI] maintained by the [DPS] 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.

Gov’t Code § 411.087(a)(2). “Criminal history record information” means “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.” *Id.* § 411.082(2). Thus, a domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See* Gov’t Code § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

The requestor states she has been appointed by the Dallas County Family District Courts to complete a court-ordered social study involving the individual named in the request. *See* Fam. Code § 107.051(b) (court ordered social study may be performed by domestic relations office). Therefore, if the department determines the information at issue is related to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the department must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines either the information at issue is not related to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or disclosure of the information is not consistent with the Family Code, then the department must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See* Fam. Code § 261.201; *see also* ORD 440 at 2; Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5 (1986).

In summary, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. If the department determines the information we have marked is related to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the department must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Otherwise, the department must

³As our ruling is dispositive, we do not address your remaining argument to withhold this information.

withhold the information we have marked 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 601917

Enc. Submitted documents

c: Requestor
(w/o enclosures)