



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2016

Ms. Michelle Buendia
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2016-23992

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# 631945 (ORR# 2016-10542).

The Dallas Police Department (the "department") received a request for information pertaining to three named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ 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 of the Family Code, which provides, in relevant part, as follows:

(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:

¹We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exceptions you claim can provide a compelling reason to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(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.

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Incident report number 233666-2014 is a report of alleged or suspected child abuse or neglect made to the department. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We note the requestor has provided a signed authorization for release of information from a parent of the child victim listed in report number 233666-2014. However, the parent at issue is alleged to have committed the suspected abuse or neglect in report number 233666-2014. Therefore, we determine the requestor does not have a right of access to report number 233666-2014 under section 261.201(k). *See id.* § 261.201(k).

However, section 261.201 provides information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 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 (the “DPS”)] criminal history record information (“CHRI”) 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, or a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation.” Gov’t Code § 411.1285(a); *see* Fam. Code chs. 203 (governing administration of domestic relations

offices), 107 (governing child custody evaluations). 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). CHRI 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 CHRI 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, or a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

The requestor states she has been ordered by the Dallas County Family District Courts to complete a social study involving the individuals named in the request. Therefore, if the department determines report number 233666-2014 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 or to a person involved in a child custody evaluation under chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation, and if the department determines release of the information is consistent with the Family Code, then the department must make CHRI from report number 233666-2014 available to the requestor and must withhold the remainder of report number 233666-2014 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Fam. Code § 107.103 (court ordered child custody evaluation must be performed by individual qualified under Fam. Code § 107.104); *see also id.* § 107.104(b)(3) (individual employed by or under contract with domestic relations office is qualified to conduct child custody evaluation). However, if the department determines report number 233666-2014 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 to a person involved in a child custody evaluation under Chapter 107 of the Family Code, in which the domestic relations office has been appointed to conduct the child custody evaluation, or if the department determines disclosure of the information at issue is not consistent with the Family Code, then the department must

withhold report number 233666-2014 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986); 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).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Report number 0852657-L involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the department must withhold report number 0852657-L under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

²We note because report number 0852657-L does not contain CHRI of either individual named in the request for information, we do not address whether the requestor has a right of access to CHRI under sections 411.087 and 411.1285(a) of the Government Code. *See Gov't Code* §§ 411.087(a)(2), .1285(a). Additionally, because our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

In summary, the department must generally withhold report number 233666-2014 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; however, if the department determines this 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 or to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the domestic relations office has been appointed to conduct the child custody evaluation and determines release of the information is consistent with the Family Code, then the department must make identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions from report number 233666-2014 available to the requestor. The department must withhold report number 0852657-L under section 552.101 of the Government Code in its entirety in conjunction with section 58.007(c) 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bhf

Ref: ID# 631945

Enc. Submitted documents

c: Requestor
(w/o enclosures)