



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2016

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2016-24382

Dear Ms. Aguilar:

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# 633165 (CCPD File No. JSol2).

The Corpus Christi Police Department (the "department") received a request for all police records for a specified address and time period. We understand you will redact some information pursuant to Open Records Letter No. 2011-16393 (2011).¹ You claim some of 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.

Initially, we note the information we have marked is not responsive to the instant request for information because it is not a police record. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

¹Open Records Letter No. 2011-16393 is a previous determination issued to the department authorizing the department to withhold the originating telephone numbers and addresses of 9-1-1 callers furnished to the department by a 9-1-1 service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without the necessity of requesting an attorney general decision.

Gov't Code § 552.101. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part 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). The information you have marked involves alleged juvenile delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997. *See id.* §§ 51.02(2) (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 when the conduct occurred), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of section 58.007). None of the exceptions in section 58.007 appear to apply. Therefore, the information you have marked is generally confidential pursuant to section 58.007(c) of the Family Code.

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
- (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 you have marked pertains to files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of child abuse under chapter 261. Thus, this information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* § 101.003(a) (defining “child” for purposes of this section). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information you have marked is generally confidential pursuant to section 261.201 of the Family Code.

We note the requestor is a representative of the Corpus Christi Housing Authority (the “housing authority”). Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides, “[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). Section 1437d(q)(1)(C) provides, “[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” *Id.* § 1437d(q)(1)(C). In Open Records Decision No. 655 (1997), this office concluded this federal statute authorizes local housing authorities to obtain the criminal history record information (“CHRI”) of adult applicants and tenants. *See* ORD 655 at 4. CHRI consists of “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.” Gov’t Code § 411.082(2). However, the federal law limits the purposes for which a public housing authority may request CHRI. The federal law provides, among other things, (1) public housing agencies may receive CHRI of adult and juvenile applicants or tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law.” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over sections 58.007 and 261.201 of the Family Code. *Cf. Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). However, as previously discussed, section 1437d(q)(1)(C) allows a housing authority to obtain access to juvenile CHRI “only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” 42 U.S.C. § 1437d(q)(1)(C). Juvenile justice information is confidential but may be released to “any entity to which [the Texas Department of Public Safety (“DPS”)] may grant access to adult criminal records as provided by section 411.083 of the Government Code.” Fam. Code § 58.106(a)(2). Section 411.083(b)(2) of the Government Code states that DPS is required to provide CHRI to a non-criminal justice

agency authorized to receive CHRI pursuant to federal statute, executive order, or state statute. Gov't Code § 411.083(b)(2). Because housing authorities are authorized to obtain adult CHRI under sections 1437d(q)(1)(A) and 411.083(b)(2), they are also authorized to obtain similar information regarding juveniles. The housing authority, however, may only obtain and use juvenile information in accordance with section 1437d(q)(1)(A). *See also id.* § 411.084(2)(B) (stating CHRI may only be disclosed or used as authorized or directed by another statute).

Although the requestor is with the housing authority, the requestor does not state, and we are unable to determine, whether she is seeking the release of the CHRI of applicants or tenants for purposes of applicant screening, lease enforcement, or eviction. Thus, if the information at issue relates to applicants or tenants of the housing authority, and the department determines the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then we conclude the department must release to the requestor any CHRI of applicants or tenants of public housing that is contained within the information at issue in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and Open Records Decision No. 655. *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records). The department must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor does not intend to use the information at issue for purposes of applicant screening, lease enforcement, or eviction, then the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code in its entirety, and the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code in its entirety.

Next, we address your assertion some of the remaining responsive information is excepted from disclosure under common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the submitted information relates to applicants or tenants of the housing authority, and the department determines the requestor intends to use the CHRI for purposes of applicant screening, lease enforcement, or eviction, then the department must release to the requestor any CHRI of applicants or tenants of public housing that is contained within the information at issue in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and Open Records Decision No. 655. The department must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with sections 58.007(c) and 261.201 of the Family Code. If the department determines the requestor does not intend to use the information at issue for purposes of applicant screening, lease enforcement, or eviction, then the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with sections 58.007(c) and 261.201 of the Family Code in its entirety. The department must withhold the information we marked in the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining responsive information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID# 633165

Enc. Submitted documents

c: Requestor
(w/o enclosures)