



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2016

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

OR2016-24677

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# 633173 (CCPD File Number: RBen5).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified incident. You claim 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.

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 section 261.201 of the Family Code, which provides, in part, 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). Upon review, we agree the submitted information was used or developed in an investigation under chapter 261. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Thus, the information is within the scope of section 261.201 of the Family Code. You state the department has not adopted a rule that governs the release of this type of information. Therefore, 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, we note the requestor in this instance indicates she 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). 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, 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 section 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).

The requestor does not state whether the submitted information will be used for purposes of applicant screening, lease enforcement, or eviction. Thus, if the department determines the requestor will use the submitted information for purposes of applicant screening, lease enforcement, or eviction, then any CHRI of applicants or tenants of public housing that is contained within the submitted information must be released to this requestor in accordance with section 1437d(q)(1) of chapter 42 of the United States Code. *See also* 24 C.F.R. § 5.903

(describing public housing authorities' access to criminal records). In that event, the remainder of the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines the requestor does not intend to use the submitted information for purposes of applicant screening, lease enforcement, or eviction, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

The department asks this office to issue a previous determination that would allow it to withhold information made confidential under section 261.201 without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 663173

Enc. Submitted documents

c: Requestor
(w/o enclosures)