



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2016

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2016-00613

Dear Ms. Mebane:

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# 594593 (Fort Worth PIR No. W046753).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident number. You claim the submitted 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 public 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 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). You state the submitted information relates to an investigation of alleged or suspected child abuse or neglect conducted by the city's police department (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 section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, 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, section 261.201(a) provides information encompassed by subsection (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.

We note the requestor is a representative of the United States Immigration and Customs Enforcement ("ICE"), and thus, may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides, "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (the "DPS")] any criminal history record information ["CHRI"] maintained by the [DPS] about a person." *See* Gov't Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides, in pertinent 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.

Id. § 411.087(a)(2). We note CHRI is defined as "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." *See id.* § 411.082(2). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may receive such

information only for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, if the requestor in this instance is a representative of a “criminal justice agency” and seeks the information for purposes consistent with the Family Code, then the requestor is authorized to obtain CHRI from the submitted information pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Crim. Proc. Code art. 60.01(1).

Although it appears ICE is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose. We also are unable to determine whether the requestor intends to use the information for purposes consistent with the Family Code. Consequently, if the city determines the requestor intends to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the city must release any CHRI from the information at issue that is otherwise subject to section 261.201 of the Family Code. Although the city seeks to withhold the submitted information under section 552.108 of the Government Code, we note exceptions in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the city determines the requestor does not intend to use the CHRI for a criminal justice purpose or for purposes consistent with the Family Code, then the city must withhold the submitted information in its entirety pursuant to section 552.101 in conjunction with section 261.201.¹ *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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,

A handwritten signature in black ink, appearing to read 'Meagan J. Conway', written in a cursive style.

Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/bw

Ref: ID# 594593

Enc. Submitted documents

c: Requestor
(w/o enclosures)