



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 29, 2016

Ms. Kristen Lee  
Assistant County Attorney  
County of Harris  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2016-26334

Dear Ms. Lee:

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# 636902 (ORR# 16PIA0573).

The Harris County Constable's Office, Precinct 6 (the "constable's office"), received a request for incident number HC16-119112. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> 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 other statutes. Section 261.201(a) of the Family Code provides 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:

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<sup>1</sup>We note the constable's office 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 exception you claim under section 552.101 of the Government Code, as well as third-party interests, can provide compelling reasons to overcome the presumption of openness, we will consider the constable's office's arguments against disclosure of the submitted information. *See id.* §§ 552.007, .302, .352; *see also* Open Records Decision No. 586 at 3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure).

(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 was used or developed in an investigation of alleged or suspected child abuse conducted by the constable's office. *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. You do not indicate the constable's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Thus, we agree the submitted information is generally confidential pursuant to section 261.201 of the Family Code.

However, we note the requestor in this instance is a representative of the Houston 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 sections 58.007(c) and 261.201 of the Family Code and section 552.108 of the Government Code.<sup>2</sup> *Cf. Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F.

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<sup>2</sup>Section 58.007 of the Family Code makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c); *see also id.* §§ 51.02(2) (defining "child" as a person who is ten years of age or older and younger than seventeen years of age at the time of the reported conduct); 51.03 (defining "delinquent conduct" for purposes of section 58.007).

Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). The requestor states the requested information will be used for purposes of lease enforcement. Thus, any CHRI of applicants or tenants of public housing that is contained within the submitted report must be released to this requestor 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 constable's office must withhold the remainder of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup>

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 636902

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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The submitted information is also subject to section 58.007(c).

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.