



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2017

Ms. Dawn Roberts
Assistant City Attorney
Legal Division
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2017-07317

Dear Ms. Roberts:

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# 652524 (ORR# 33938).

The Arlington Police Department (the "department") received a request for a specified incident report related to the arrest of a named individual. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides 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:

- (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 find the submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Thus, this information is generally confidential under section 261.201(a) of the Family Code. However, we note 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.” *Id.* § 261.201(a).

In this instance, the requestor is an investigator with the Texas Board of Nursing (the “board”). Section 411.125 of the Government Code provides:

The [board] is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who:

- (1) is an applicant for or the holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov’t Code § 411.125. In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

- (2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). “Criminal history record information” (“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). Thus, under

sections 411.087 and 411.125, the board may have a right of access to CHRI about the named individual contained in the department's records.

In this instance, the named individual may be an applicant for or a holder of a license from the board, may have requested a determination of eligibility for a license from the board, or may be subject to investigation by the board in connection with a complaint or formal charge. *See id.* § 411.125. Consequently, if the department determines release of the CHRI is consistent with the purposes of the Family Code and the named individual is an individual described by section 411.125 of the Government Code, then the requestor is authorized to obtain the named individual's CHRI contained in the submitted information and the department must release the CHRI to this requestor. In that instance, the remainder of the submitted information is confidential under section 261.201(a) of the Family Code and must be withheld under section 552.101 of the Government Code. Although you also raise section 552.108 of the Government Code for such information, a specific statutory right of access prevails over the general exceptions in the Act. *See* Open Records Decision Nos. 623 at 4 (1994), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 525 at 3 (1989), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the department determines release is not consistent with the purposes of the Family Code or if the named individual is not an individual described by section 411.125 of the Government Code, then the board does not have a right of access to the named individual's CHRI, and 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.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 652524

Enc. Submitted documents

c: Requestor
(w/o enclosures)