



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2017

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P. O. Box 1329  
Killeen, Texas 76540

OR2017-08863

Dear Ms. Pemberton:

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# 655365 (PIR #W021453).

The Killeen Police Department (the "department") received a request for a specified incident report involving 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 that is made confidential by statute. Section 261.201(a) of the Family Code provides as follows:

(a) The 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). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *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. We have no indication 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 confidential pursuant to section 261.201 of the Family Code. However, we note section 261.201(a) provides that 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).

We note the requestor is a representative of the Pennsylvania Department of Corrections and may have a right of access to some of the requested information. Section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain from the Texas Department of Public Safety (“DPS”) any criminal history record information (“CHRI”) maintained by the DPS about a person. *See Gov’t Code* § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS CHRI] maintained by [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). Thus, the requested information contains CHRI.

Section 411.082 of the Government Code defines a “criminal justice agency” as including “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[.]” *Id.* § 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 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)*. We understand the requestor represents a criminal justice agency as defined by section 411.082. *See Gov’t Code § 411.082*. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information 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). Section 411.082(4) defines “criminal justice purpose” as including “screening of applicants for employment with a criminal justice agency.” *Gov’t Code § 411.082(4)(B)*.

The requestor states the requested information is sought for purposes of conducting a background investigation of the named individual. Thus, we find the requestor is seeking the information at issue for a criminal justice purpose. However, we are unable to determine whether the requestor intends to use the CHRI for purposes consistent with the Family Code. Accordingly, if the department determines release of the CHRI at issue is consistent with the Family Code, the department must make available to the requestor the CHRI at issue and must withhold any remaining information in the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>1</sup> Although the department also raises section 552.108 of the Government Code, a specific statutory right of access overcomes the general exceptions in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the department determines the requestor does not intend to use the CHRI at issue for purposes consistent with the Family Code, 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.<sup>2</sup> *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute).

In summary, if the department determines release of the CHRI from the submitted information is consistent with purposes of the Family Code, the department must make

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

available to the requestor this CHRI and must withhold any remaining information in the submitted information 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 CHRI for purposes consistent with the Family Code, 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](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,



Emily Buchanan  
Assistant Attorney General  
Open Records Division

EB/eb

Ref: ID# 655365

Enc. Submitted documents

c: Requestor  
(w/o enclosures)