



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2017

Ms. Sally Ortiz
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2017-22156

Dear Ms. Ortiz:

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# 677556 (COP Tracking# HAVC071917).

The Plano Police Department (the "department") received a request for information pertaining to a specified incident. The department states it has no information responsive to a portion of the request.¹ The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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). The department states, and we agree, the submitted information relates to an investigation of alleged or suspected child abuse or neglect conducted by the department. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Therefore, we find the submitted information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, we note the requestor is a representative of the Oswego County, New York, District Attorney’s Office and may have a right of access to some of the submitted 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 submitted 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)*. 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).

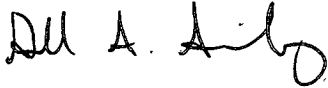
We understand the requestor represents a criminal justice agency as defined by section 411.082 and is seeking the information at issue for a criminal justice purpose. *See* Gov’t Code § 411.082. However, we are unable to determine whether the requestor intends to use the CHRI for purposes consistent 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 the remaining 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 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. *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).

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 "Gerald A. Arismendez". The signature is cursive and somewhat stylized, with a large initial "G" and "A".

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 677556

Enc. Submitted documents

c: Requestor
(w/o enclosures)