



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 26, 2017

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

OR2017-24433

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# 682458 (ORR #FREJ081617).

The Plano Police Department (the "department") received a request for police reports pertaining to four named individuals. You state the department has released some information to the requestor. 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 section 261.201 of the Family Code, which provides, in relevant part, 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You assert the information in Exhibit C was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). Upon review, we find Exhibit C is within the scope of section 261.201(a). We note the requestor has provided a signed authorization for release of information from the parents of the child victim listed in the submitted report. However, one of the parents at issue is alleged to have committed the suspected abuse or neglect in the information at issue. Therefore, we determine the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k).

However, section 261.201 provides information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a-1) of the Government Code provides:

(a-1) [A] domestic relations office created under Chapter 203, Family Code, or a child custody evaluator appointed under Chapter 107, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] criminal history record information [(“CHRI”)] that relates to a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office or child custody evaluator has been appointed to conduct the child custody evaluation.

Act of May 19, 2017, 85th Leg., R.S., ch. 257, § 9, 2017 Tex. Sess. Law Serv. 476, 479 (to be codified as Gov't Code § 411.1285(a-1)); *see* Fam. Code chs. 203 (governing administration of domestic relations offices), 107 (governing child custody evaluations). Additionally, section 411.087 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 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.

Gov't Code § 411.087(a)(2). CHRI means "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." *Id.* § 411.082(2). Thus, a child custody evaluator appointed under Chapter 107 of the Family Code may only receive CHRI if the information relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the child custody evaluator has been appointed to conduct the child custody evaluation. *See* Act of May 19, 2017, 85th Leg., R.S., ch. 257, § 9, 2017 Tex. Sess. Law Serv. 476, 479 (to be codified as Gov't Code § 411.1285(a-1)); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

The requestor states she is performing a child custody evaluation involving the individuals named in the request at the direction of the Denton County courts. Therefore, if the department determines the requestor is a child custody evaluator appointed under Chapter 107 of the Family Code and the information in Exhibit C relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the requestor has been appointed to conduct the child custody evaluation, and if the department determines release of the information is consistent with the Family Code, then the department must make CHRI within Exhibit C available to the requestor and must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Fam. Code § 107.103 (court ordered child custody evaluation must be performed by individual qualified under Fam. Code § 107.104). However, if the department determines the requestor is not a child custody evaluator appointed under Chapter 107 of the Family Code, or the information in Exhibit C does not relate to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the requestor has been appointed to conduct the child custody evaluation, or if the department determines disclosure of the information at issue is not consistent with the Family Code, then the department must withhold Exhibit C in its entirety under section

552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986); Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Your state report number 2016-00015766 relates to a pending criminal case, and release of that information would interfere with the investigation and prosecution of the case. Based upon this representation and our review, we conclude the release of report number 2016-00015766 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is generally applicable to report number 2016-00015766.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the department may generally withhold report number 2016-00015766 under section 552.108(a)(1) of the Government Code.

¹In either event, our ruling is dispositive, and we need not address your remaining argument against disclosure of this information. We note a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *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). Further, a statutory right of access prevails over the common law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *Collins v. Tex Mall L.P.*, 297 S. W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle).

As noted above, however, the requestor states she is conducting a court-ordered child custody evaluation involving the individuals named in the request. Accordingly, the requestor may have a right of access to portions of report number 2016-00015766 pursuant to section 411.1285 of the Government Code. Therefore, if the department determines the requestor is a child custody evaluator appointed under Chapter 107 of the Family Code and the CHRI within report number 2016-00015766 relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the requestor has been appointed to conduct the child custody evaluation, then, pursuant to section 411.1285(a-1), the department must make available to the requestor CHRI pertaining to that person, and, with the exception of basic information, may withhold the remaining information in report number 2016-00015766 under section 552.108(a)(1) of the Government Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the department determines the requestor is not a child custody evaluator appointed under Chapter 107 of the Family Code, or the CHRI within report number 2016-00015766 does not relate to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the requestor has been appointed to conduct the child custody evaluation, then, with the exception of basic information, the department may withhold report number 2016-00015766 under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You seek to withhold Exhibit D on the basis of common-law privacy. We note, however, the requestor has provided an authorization to release information form signed by the victim whose privacy interests are at issue. Therefore, the requestor is acting as the authorized representative of the victim, and has a right of access to information pertaining to this individual pursuant to section 552.023 of the

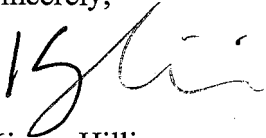
Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Consequently, the department may not withhold Exhibit D in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We further note the requestor has provided an authorization to release information form signed by the remaining individual whose privacy interests are at issue in Exhibit D. Therefore, the requestor also has a right of access to information pertaining to this individual pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, the department may not withhold any portion of Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the department determines the requestor is a child custody evaluator appointed under Chapter 107 of the Family Code and the information in Exhibit C relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the requestor has been appointed to conduct the child custody evaluation, and if the department determines release of the information is consistent with the Family Code, then the department must make CHRI within Exhibit C available to the requestor and must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor is not a child custody evaluator appointed under Chapter 107 of the Family Code or the information in Exhibit C does not relate to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the requestor has been appointed to conduct the child custody evaluation, or if the department determines disclosure of the information at issue is not consistent with the Family Code, then the department must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor is a child custody evaluator appointed under Chapter 107 of the Family Code and the CHRI within report number 2016-00015766 relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the requestor has been appointed to conduct the child custody evaluation, then the department must make available to the requestor CHRI pertaining to that person, and, with the exception of basic information, may withhold the remaining information in report number 2016-00015766 under section 552.108(a)(1) of the Government Code. If the department determines the requestor is not a child custody evaluator appointed under Chapter 107 of the Family Code, or the CHRI within report number 2016-00015766 does not relate to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the requestor has been appointed to conduct the child custody evaluation, then, with the exception of basic information, the department may withhold report number 2016-00015766 under section 552.108(a)(1) of the Government Code. The department must release the remaining 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 682458

Enc. Submitted documents

c: Requestor
(w/o enclosures)