



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2018

Mr. Jaime Tijerina
Deputy City Attorney
City of Mission
1201 East 8th Street
Mission, Texas 78572

OR2018-04683

Dear Mr. Tijerina:

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# 697508.

The Mission Police Department (the "department") received a request for a specified case. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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, such as section 261.201 of the Family Code, which provides, in relevant part:

(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 or suspected child abuse by the department. *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) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated 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 generally confidential pursuant to section 261.201 of the Family Code.

We note the requestor is a representative of the Federal Public Defender’s Office for the Southern District of Texas (the “public defender’s office”). 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). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender’s office are entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov’t Code § 411.1272. “Public defender’s office” has the meaning assigned by article 26.044(a) of the Code of Criminal Procedure. *Id.* § 411.082(6); *see also* Crim. Proc. Code art. 26.044(a)(4). In addition, section 411.087(a) of the Government Code provides:

(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 [(“CHRI”)] 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 CHRI maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). 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).

Upon review, we find the submitted information contains CHRI. Accordingly, the requestor is authorized to obtain the CHRI in the information at issue from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender’s office is appointed and if release of the information is consistent with the Family Code. *See id.* §§ 411.087(a)(2), .1272; *see also* Fam. Code § 261.201(a). However, this office cannot determine whether the release of the information is consistent with the Family Code and whether the information relates to a criminal case in which an attorney compensated by the public defender’s office is appointed. Therefore, if the department determines release of the CHRI is not consistent with the Family Code or does not relate to a criminal case in which an attorney compensated by the public defender’s office is appointed, then 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. However, if the department determines release of the CHRI is consistent with the Family Code and relates to a criminal case in which an attorney compensated by the public defender’s office is appointed, then the department must release the information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In this instance, the department must withhold the remaining information 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 697508

Enc. Submitted documents

c: Requestor
(w/o enclosures)