



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2019

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

OR2019-02875

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# 748467 (ORR# W027241).

The Killeen Police Department (the "department") received a request for information pertaining to a specified investigation involving a named individual. You state you have released some information. 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. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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 asserts the submitted information was used or developed in an investigation under chapter 261. *See id.* §§101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find the information is within the scope of section 261.201 of the Family Code. However, section 261.201(a) provides information encompassed by this section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

We note chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the [Department of Public Safety] about a person.” *See Gov’t Code* § 411.089(a). In addition, section 411.087(a) of the Government Code provides in, pertinent part, the following:

(a) [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). “Criminal history record information” 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 “criminal history record information.” However, a criminal justice agency that receives criminal history record information 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 criminal history record information). A “criminal justice agency” is defined in part as “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.” Gov’t Code § 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* Gov’t Code § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, 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 criminal history record information.” Code Crim. Proc. art. 60.01(1). Thus, if the requestor is a representative of a “criminal justice agency,” he is authorized to obtain criminal history record information from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and for purposes consistent with the Family Code. *See id.* §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

The requestor is an investigator with the Colorado Department of Education, which he asserts is a criminal justice agency. The requestor explains his agency is responsible for detecting or investigating crimes that may have a bearing on the denial, annulment, suspension, or revocation of an educator license. However, we are unable to determine whether he intends to use the criminal history record information for a criminal justice purpose or for purposes consistent with the Family Code. We note specific statutory right of access provisions overcome the general exceptions to disclosure found in the Act, including section 552.108 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). Consequently, if the department determines the requestor intends to use the criminal history record information for a criminal justice purpose and for purposes consistent with the Family Code, then the department must release information from the submitted documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the requestor does not seek this information for a criminal justice purpose or for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety pursuant to 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,

A handwritten signature in black ink that reads "D. Michelle Case" followed by a long, sweeping horizontal line.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/som

Ref: ID# 748467

Enc. Submitted documents

c: Requestor
(w/o enclosures)