



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 15, 2019

Ms. Kia Weathersby
Deputy City Clerk
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2019-04484

Dear Ms. Weathersby:

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# 750954 (ORR# 1058).

The Wichita Falls Police Department (the "department") received a request for information pertaining to a specified arrest. The department claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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(a) of the Family Code, which provides,

[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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The department asserts the requested 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. As the department does not indicate it has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor is with the Texas Board of Nursing (the “board”), and the arrestee at issue in the submitted information may be an applicant for or a holder of a license from the board. Section 261.201 provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.125 of the Government Code provides the following:

[The board] is entitled to obtain from the [Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a person who:

- (1) is an applicant for or the holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

¹As our ruling is dispositive, we do not address the other argument of the department to withhold this information.

Gov't Code § 411.125. In addition, section 411.087(a)(2) of the Government Code reads as follows:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter 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.

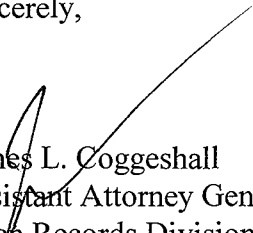
Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Thus, under sections 411.087 and 411.125, the requestor may have a right of access to CHRI about the arrestee that is contained in the records of the department. However, we are unable to determine whether release of the CHRI is consistent with the Family Code or if the arrestee meets any of the criteria of section 411.125. A statutory right of access prevails over the Act’s general exceptions to public disclosure, including section 552.108 of the Government Code. *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 exception to disclosure under the Act). Accordingly, if the department determines (1) release of the CHRI is consistent with the Family Code and (2) the arrestee is an applicant for a license from the board, a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then the department must release the arrestee’s CHRI, 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. However, if the department determines either release of the CHRI is not consistent with the Family Code or the arrestee does not meet any of the criteria of section 411.125, 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.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 750954

Enc. Submitted documents

c: Requestor
(w/o enclosures)