



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 30, 2019

Mr. Oscar G. Gabaldon, Jr.  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-01890

OR2019-11430

Dear Mr. Gabaldon:

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# 762623 (Ref. No. 19-1026-10211).

The El Paso Police Department (the "department") received a request for information pertaining to a specified police report involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> 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 information made confidential by other statutes, such as section 261.201(a) 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

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. See Gov't Code §§ 552.301, .302.

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). You state the submitted information was used in an investigation of alleged child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). You do not indicate the department has adopted any rules that would permit the release of the responsive information. Accordingly, we find the submitted information is subject to chapter 261 of the Family Code. Therefore, we conclude the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor is a representative of the Texas Health and Human Services Commission (the “commission”) and may have a right of access to some of the submitted information. 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 411.122(a) of the Government Code provides, in part:

an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety (“DPS”)] criminal history record information maintained [“CHRI”] by [DPS] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.

Gov’t Code § 411.122(a). We note section 411.122(d)(8) provides:

The following state agencies are subject to this section:

(8) Department of State Health Services [(“DSHS”)],<sup>2</sup> except as provided by Section 411.110, and agencies attached to the department, including:

(A) Texas State Board of Examiners of Marriage and Family Therapists;

(B) Texas State Board of Examiners of Professional Counselors; and

(C) Texas State Board of Social Worker Examiners[.]

*Id.* § 411.122(d)(8). 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 [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.

*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 report contains CHRI related to the named individual. The requestor states the named individual is a licensee under the jurisdiction of the commission. Thus, the requestor is authorized to obtain the submitted CHRI pursuant to sections 411.087(a)(2) and 411.122 of the Government Code, but only for purposes consistent with the Family Code. *See id.* §§ 411.087(a)(2), . 122(a); Fam. Code § 261.201(a). We note 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).*

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<sup>2</sup>The requestor states she is with the Professional Licensing and Certification Unit (the “unit”) of the commission. We note the Eighty-Fourth Legislature passed Senate Bill 200, which as of September 1, 2017, transferred the regulatory authority over the unit from DSHS to the commission.

Although the named individual is a license holder under the jurisdiction of the commission, we are unable to determine whether disclosure of the CHRI is for purposes consistent with the Family Code. Consequently, if the department determines disclosure of the information is not for purposes consistent with the Family Code, 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. *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute). However, if the department determines disclosure of the information is for purposes consistent with the Family Code, then the department must release the CHRI regarding the named individual, 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.

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](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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/mo

Ref: ID# 762623

Enc. Submitted documents

c: Requestor  
(w/o enclosures)