



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 3, 2019

Mr. John Saenz
Crime Records Office
McAllen Police Department
P.O. Box 220
McAllen, Texas 78501

OR2019-18360

Dear Mr. Saenz:

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# 773519 (PIR 50277).

The McAllen Police Department (the "department") received a request for all incident reports involving two named individuals. You state the department has released some information. You claim the submitted information is excepted from disclosure under section 552.108 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

(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 report number 2012-00092103 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. Thus, we find report number 2012-00092103 is within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 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). You do not indicate 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 find report number 2012-00092103 is generally confidential under section 261.201(a) of the Family Code. Nevertheless, section 261.201 of the Family Code 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 regard.

In this instance, the requestor states he is conducting a court-ordered social study, and thus, he may have a right of access to portions of the requested information pursuant to section 411.1285 of the Government Code. Section 411.1285(a) provides in part, “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.”² *See* Gov’t Code § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] 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.

²A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2).

Gov't Code § 411.087(a)(2). "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 information at issue contains "criminal history record information." However, a domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(c); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information).

As noted above, the requestor states he is conducting a court-ordered social study regarding the individuals named in the request for information. *See* Fam. Code § 107.051 (b) (domestic relations office may perform court-ordered social study). Therefore, if the department determines report number 2012-00092103 relates to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the department must (1) make available to the requestor information from report number 2012-00092103 that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and (2) withhold the remaining information in report number 2012-00092103 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We note a specific statutory right of access provision prevails over the Act's general exceptions to disclosure, such as section 552.108. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, the department must withhold report number 2012-00092103 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if it determines either the information is not related to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or disclosure of the information is not consistent with the Family Code.³ *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); *see also* 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); Open Records Decision No. 440 at 2 (1986).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded

³As our ruling is dispositive for this information, we need not consider your remaining argument against its disclosure.

in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the remaining information pertains to criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to the remaining information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” 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). Accordingly, with the exception of basic information, the department may generally withhold the remaining information under section 552.108(a)(2) of the Government Code.

As previously noted, section 411.1285(a) of the Government Code allows a domestic relations office to obtain criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. Further, as discussed above, the requestor states he is completing a court-ordered social study regarding the individuals named in the request for information. *See* Fam. Code § 107.051(b). Therefore, if the department determines the remaining information relates to persons who are parties to a proceeding in which the requestor is providing services permitted under chapter 203 of the Family Code, then, pursuant to section 411.1285(a), the department must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and with the exception of basic information, may withhold the remainder of the remaining information under section 552.108(a)(2) of the Government Code. *See* ORD 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, if the department determines the remaining information does not relate to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, then the department may, with the exception of basic information, withhold the remaining information under section 552.108(a)(2) of the Government Code. *See* ORD 440 at 2; Attorney General Opinions DM-353 at 4 n.6, JM-590 at 4-5.

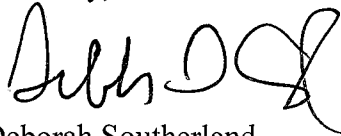
In summary, if the department determines report number 2012-00092103 relates to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code and release of the information is consistent with the Family Code, then the department must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions and withhold the remaining information in this report under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. However, if the department determines either the information at issue is not related to persons who are parties to a

proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code or disclosure of the information is not consistent with the Family Code, then the department must withhold report number 2012-00092103 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 remaining information relates to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, then the department must make available to the requestor information that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and with the exception of basic information, which must be released, may withhold the remainder of the remaining information under section 552.108(a)(2) of the Government Code. However, if the department determines the remaining information does not relate to persons who are parties to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code, then the department may, with the exception of basic information, which must be released, withhold the remaining information under section 552.108(a)(2) of the Government 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,



Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 773519

Enc. Submitted documents

c: Requestor
(w/o enclosures)