



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 6, 2019

Ms. Brandi Henderson
Custodian of Records
Kaufman County Sheriff's Office
P.O. Drawer 849
Kaufman, Texas 75142

OR2019-24949

Dear Ms. Henderson:

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# 784285.

The Kaufman County Sheriff's Office (the "sheriff's office") received a request for a specified incident report involving a named individual. You state you have released some information to the requestor. 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). Upon review, we find the submitted information was used or developed in an investigation by the sheriff's office under chapter 261. *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). Thus, the information is within the scope of section 261.201 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the sheriff's office must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor is a recruiter for the United States Navy (the "Navy"), and the named individual is a potential enlistee. The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into armed services. *See* 5 U.S.C. § 9101(b)(1)(A)(iii); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Navy has a right to the criminal history record information ("CHRI") of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(7) (DoD includes the Department of the Navy). CHRI is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release" but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2).

Federal law provides the Navy's right of access to CHRI preempts common-law privacy and state confidentiality provisions, such as section 261.201 of the Family Code, as well as section 552.108 of the Government Code. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"); *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (federal agency acting within scope of congressionally delegated authority may preempt state regulation); *see also* U.S. Const. art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law). However, federal law also provides the Navy's right of access is contingent on the request being made for eligibility or retention purposes, and on receiving written consent from the individual

under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c). You state the individual at issue has submitted written consent for the release of the information at issue. Therefore, the sheriff's office must release the CHRI pertaining to 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.¹

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 784285

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address your remaining arguments to withhold this information.