



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 13, 2019

Ms. Josi Diaz  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar, 6 FL, 6 W  
Dallas, Texas 75215

OR2019-25763

Dear Ms. Diaz:

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# 785605 (ORR# D017101).

The Dallas Police Department (the "department") received a request for two offense reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we note you have only submitted one of the requested reports. Although you state the department submitted a representative sample of information, the submitted information is not representative of all the information requested. Please be advised, this open records letter ruling applies only to the type of information the department submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the type of information the department submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information is presumed to be public). Accordingly, to the extent the department maintained the other requested report on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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<sup>1</sup>We note, and you acknowledge, the department failed to comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(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

(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 submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Section 261.201(a), however, also 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).

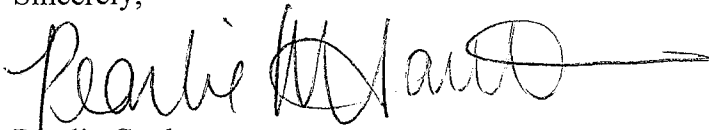
Chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is an investigator with the Texas Department of Licensing and Regulation (the “TDLR”). Sections 411.093 and 411.122 of the Government Code both provide the TDLR is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who is an applicant for or the holder of a license issued by the TDLR. Gov’t Code §§ 411.093, .122(a)(1)-(2), .122(d)(10). Section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *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.” *See id.* § 411.082(2). Thus, when read together, sections 411.087, 411.093, and 411.122 of the Government Code may grant the TDLR a right of access to CHRI in the submitted information.

The requestor does not state, and we are not able to determine, whether the information the requestor seeks relates to an applicant for or the holder of a license issued by the TDLR. Thus if the department determines the information the requestor is seeking relates to an applicant for or the holder of a license issued by the TDLR and release of the information at issue is consistent with the purposes of the Family Code, then the requestor has a right of access to CHRI about the individual pursuant to sections 411.087, 411.093, and 411.122 of the Government Code. In that instance, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for this information, we note a statutory right of access prevails over a claim under common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.-Fort Worth 2009, no pet.) (statutory provision controls and pre-empts common law only when statute directly conflicts with common-law principle); *see also Center Point Energy Houston Elec. LLC v. Harris County Toll Rd. Auth*, 36 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). However, if the department determines the information the requestor is seeking does not relate to an applicant for or the holder of a license issued by the TDLR or if the department determines release of the CHRI is not consistent with the purposes of the Family Code, the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 261.201 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 <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,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal line extending to the right.

Pearlie Gault  
Attorney  
Open Records Division

PG/eb

Ms. Josi Diaz - Page 4

Ref: ID# 785605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)