



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Ms. Leigh Ann Tognetti
Assistant District Attorney
Hidalgo County District Attorney's Office
100 East Cano Street
Edinburg, Texas 78539

OR2019-28416

Dear Ms. Tognetti:

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# 790096 (Ref. No. 2019-0015-DA).

The Hidalgo County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. 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 information protected by other statutes, such as 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 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 assert the submitted 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 agree the information at issue is within the scope of section 261.201 of the Family Code. Thus, this information is generally confidential under section 261.201(a) of the Family Code. However, we note section 261.201(a) 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 instance. We note, and you acknowledge, the requestor is an investigator with the Texas Department of Licensing and Regulation (“TDLR”). Sections 411.093 and 411.122 of the Government Code both provide 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), (d)(10). Section 411.087(a)(2) 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 TDLR a right of access to the 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 district attorney’s office 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. Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code for the information at issue, we note a specific statutory right of access generally prevails over common-law privacy and exceptions to public disclosure under the Act. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); Open Record Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the district attorney’s office 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. However, if

the district attorney's office determines the information at issue does not relate to an applicant for or the holder of a license issued by the TDLR or release of the CHRI is not consistent with the purposes of the Family Code, the district attorney's office 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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/gw

Ref: ID# 790096

Enc. Submitted documents

c: Requestor
(w/o enclosures)