



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2019

Ms. Amanda Ruddy and Ms. Erin Ham
Deputy City Clerks
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2019-29967

Dear Ms. Ruddy and Ms. Ham:

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# 793385 (City ID# 762 & 810).

The City of Wichita Falls (the "city") received two requests for 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. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). You state the city received the first request on August 6, 2019. Thus, the city's ten-business-day deadline under section 552.301(b) for this request was August 19, 2019. We note you did not raise section 552.108 of the Government Code for the information, which you have submitted as responsive to both requests, until August 30, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail and common or contract carrier). Consequently, we find you failed to comply with the requirements of section 552.301 of the Government Code with respect to your claim under section 552.108 for the submitted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd.*

of Ins., 797 S.W.2d 379, 381 82 (Tex. App.—Austin 1990, no writ). Although the city claims section 552.108, we find the city failed to establish a compelling reason to address this provision. Accordingly, the city may not withhold any portion of the submitted under section 552.108 of the Government Code. However, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of this section to 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). The city asserts the submitted information was used or developed in an investigation by the city’s police department of alleged or suspected child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also 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). Accordingly, the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated the city’s police 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 conclude the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code. However, 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.” *Id.* § 261.201(a). We note chapter 411 of the Government Code constitutes “applicable state law” in this instance.

Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Department of Public Safety (“DPS”)] any criminal history record information [(“CHRI”)] maintained by the [DPS] about a person.” Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing the DPS shall grant criminal justice agencies access to CHRI). 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 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). A criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor in this instance represents a “criminal justice agency,” the requestor is authorized to obtain CHRI from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a); Gov’t Code §§ 411.083(c), .087(a)(2).

A “criminal justice agency” is defined in part as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” *Id.* § 411.082(3)(A). “Administration of criminal justice” has the meaning assigned by article 66.001 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 66.001 of the Code of Criminal Procedure defines “administration of criminal justice” as the “detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.” Crim. Proc. Code art. 66.001.

In this case, the requestors are representatives of the Child Welfare Division of the Oregon Department of Human Services. We cannot determine whether they are representatives of a criminal justice agency, or whether they intend to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code. Accordingly, we must rule conditionally. If the city determines the requestors are requesting the information on behalf of a criminal justice agency for purposes of chapter 411 of the Government Code and determines the requestors seek the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, we conclude the city must make available to the requestors any CHRI from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the city 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 city determines the requestors either are not representatives of a criminal justice agency for purposes of chapter 411 of the Government Code or do not seek access to the information at issue for a criminal justice purpose and for purposes consistent with the Family Code, then the city must withhold the submitted information in its entirety

under section 552.101 of the Government Code 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

Ref: ID# 793385

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)