



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2020

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
University of Texas System
210 West Seventh Street
Austin, Texas 78701-2902

OR2020-00123

Dear Ms. Burnett:

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# 804394 (ORR# 193143).

The University of Texas at Arlington Police Department (the "department") received a request for information pertaining to a named individual. The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The department informs us the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-32987 (2019). However, the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the department may not rely on Open Records Letter No. 2019-32987 as a previous determination and withhold or release the submitted information in accordance with that ruling. Therefore, we will address the department's argument to withhold the information at issue.

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 department asserts the submitted information was used or developed in investigations 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, report numbers 2019-01194 and 2019-01481 are within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, report numbers 2019-01194 and 2019-01481 are generally confidential section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find the remaining information is not confidential under section 261.201(a), and the department may not withhold it under section 552.101 on that ground.

Section 261.201(a) 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.” *See id.* Chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is a representative of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114(a) of the Government Code states, in pertinent part, the following:

(2) [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by[DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, CHRI consists of "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). The requestor does not state whether the subject of report numbers 2019-01194 and 2019-01481 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child. Thus, we must rule conditionally. If the subject of these reports is not an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must withhold report numbers 2019-01194 and 2019-01481 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. A statutory right of access prevails over the Act's general exceptions to public disclosure, including section 552.108 of the Government Code. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act).* Thus, if the subject of report numbers 2019-01194 and 2019-01481 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release CHRI regarding that individual pursuant to section 411.114 of the Government Code, but must withhold the remaining information in these reports under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states the remaining report pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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 Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by Houston Chronicle).* Thus, with the exception of basic

information, the department may generally withhold the remaining report under section 552.108(a)(2) of the Government Code.

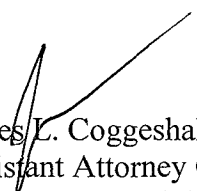
However, as noted above, the requestor may have a right of access to the CHRI in the remaining information. Thus, if the subject of the remaining report is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release CHRI regarding that individual pursuant to section 411.114 of the Government Code.

In summary, the university (1) must withhold report numbers 2019-01194 and 2019-01481 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (2) must release basic information from the remaining report, but may withhold the remaining information in this report under section 552.108(a)(2) of the Government Code. However, the department must release CHRI from the submitted reports pursuant to section 411.114 of the Government Code if the subjects in them are alleged perpetrators in reports received by DFPS of abuse or neglect of a child.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 804394

Enc. Submitted documents

c: Requestor
(w/o enclosures)