



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 3, 2020

Mr. Trey Qualls
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-03209

Dear Mr. Qualls:

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# 809533 (ORR# W093420).

The Fort Worth Police Department (the "department") received a request for a specified incident report involving a named individual. The department 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.

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 requested 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 find the information is 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, we conclude the submitted information is generally confidential pursuant to section 261.201 (a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor is a representative of the Texas State Board of Pharmacy Police Department (the “board”). 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.” Fam. Code § 261.201(a). 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 [Texas 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 DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in pertinent part, the following:

(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). Thus, the submitted report contains CHRI related to the named individual. Therefore, if the named individual is an applicant for a license from the board, is the holder of a license from the board, or requested a determination of eligibility for a license from the board, then the requestor is authorized to obtain the submitted CHRI pursuant to sections 411.087(a)(2) and 411.122 of the Government Code, but only for purposes consistent with the Family Code. *See id.* §§ 411.087(a)(2), .122(a);

¹ As our ruling is dispositive, we do not address the other argument of the department to withhold this information.

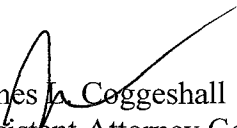
Fam. Code § 261.201(a). We note a statutory right of access prevails over the Act's general exceptions to public disclosure, including section 552.108 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act).

The requestor states the named individual is an applicant for a license from the board. However, we are unable to determine whether disclosure of the CHRI is for purposes consistent with the Family Code. Consequently, if the department determines disclosure of the information is not for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute). However, if the department determines disclosure of the information is for purposes consistent with the Family Code, then the department must release the CHRI, but withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,


James A. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 809533

Enc. Submitted documents

c: Requestor
(w/o enclosures)