



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2020

Mr. Alexander Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2020-10537

Dear Mr. Garcia:

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# 820786 (Ref. No. JSa18).

The Corpus Christi Police Department (the "department") received three requests from the same requestor for specified police reports. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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 an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we find some of the submitted information is within the scope of section 261.201 of the Family Code. Therefore, reports 2001060073 and 2001140049 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 you have failed to demonstrate the remaining information at issue was used or developed in an investigation under chapter 261 of the Family Code, or consists of a report of alleged or child suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, the requestor is a representative of the Corpus Christi Housing Authority (the “housing authority”). Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides, “[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). Section 1437d(q)(1)(C) provides, “[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” *Id.* § 1437d(q)(1)(C). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive criminal history record information (“CHRI”). ORD 655 at 4. 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.” Gov’t Code § 411.082(2). The Department of Public Safety (the “DPS”) is required to provide CHRI to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. *Id.* § 411.083(b)(2). Nonetheless, the federal law limits the purposes for which a public housing authority may request CHRI. The federal law provides, among other things, CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law[.]” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 261.201 of the Family Code. *Cf. Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law).

The requestor does not indicate whether the information at issue will be used for purposes of applicant screening, lease enforcement, or eviction. Accordingly, if the department determines the information at issue will be used for purposes of applicant screening, lease enforcement, or eviction, then the department must release any CHRI of applicants or tenants of public housing in accordance with section 1437d(q)(1) of chapter 42 of the United States Code, but withhold the remaining information in reports 2001060073 and 2001140049 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records). However, if the department determines the requested information will not be used for purposes of applicant screening, lease enforcement, or eviction, then the department must withhold the entirety of reports 2001060073 and 2001140049 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including the Family Code. Subchapter E of chapter 264 of the Family Code applies to children's advocacy centers. Fam. Code §§ 264.401-.411. Section 264.408 of the Family Code provides in relevant part:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter. Disclosure may be to:

(1) the [Texas Department of Family and Protective Services ("the DFPS")], DFPS employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under Section 107.031.

Id. § 264.408(a); *see also id.* § 264.001(1-a) (defining "department" for purposes of chapter 264 of the Family Code). Section 264.408 provides that certain information used or developed in providing services under chapter 264 of the Family Code, which concerns child welfare services, is confidential. Section 264.408 also explicitly provides for circumstances in which such confidential information may be disclosed. *See id.* You state the remaining information was obtained from a Children's Assessment Center (the "CAC") that qualifies under chapter 264 of the Family Code as a children's advocacy center. You state the CAC provided services under chapter 264 to the child listed in the report at issue. As a part of these services, you explain the CAC conducted recorded interviews of the child, which were provided to the department by the CAC. You state portions of the information at issue are summaries of these CAC interviews and are confidential. Based on your arguments and our review, we conclude a portion of the information at issue is confidential pursuant to section 264.408(a) of the Family Code. Furthermore, it does not appear the

provisions allowing for the disclosure of this information apply to this requestor. *See id.* § 264.408(a)(1), (2). Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code. However, we do not find, and the documents do not reflect, the remaining information pertains to the provision of services by a child advocacy center under chapter 264 of the Family Code. Accordingly, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Accordingly, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.¹ *See Gov't Code* § 552.130. Accordingly, we find the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the department determines the requestor will use the information at issue for purposes of applicant screening, lease enforcement, or eviction, then the department must release any CHRI of applicants or tenants of public housing that is contained within the information at issue in accordance with section 1437d(q)(1) of chapter 42 of the United States Code, but must withhold the remaining information in reports 2001060073 and 2001140049 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines the requestor does not intend to use the information at issue for purposes of applicant screening, lease enforcement, or eviction, then the department must withhold the entirety of reports 2001060073 and 2001140049 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code. The department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information.

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision* Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Sean McCormick
Attorney
Open Records Division

SMC/jxd

Ref: ID# 820786

Enc. Submitted documents

c: Requestor
(w/o enclosures)