



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Mr. John B. Strong  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102

OR2020-12659

Dear Mr. Strong:

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# 828267 (ORR# W098598).

The Fort Worth Police Department (the "department") received a request for records related to three named individuals at specified addresses. The department states it is releasing some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, section 261.201 provides information encompassed by section 261.201(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 411.1285(a-1) of the Government Code provides the following:

(a-1) [A] domestic relations office created under Chapter 203, Family Code, or a child custody evaluator appointed under Chapter 107, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] criminal history record information [(“CHRI”)] that relates to a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office or child custody evaluator has been appointed to conduct the child custody evaluation.

Gov’t Code § 411.1285(a-1)); *see* Fam. Code chs. 107 (governing child custody evaluations), 203 (governing administration of domestic relations offices). Additionally, section 411.087 of the Government Code reads as follows:

(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 [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.

Gov't Code § 411.087(a)(2). CHRI means “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.” *Id.* § 411.082(2). Thus, a child custody evaluator appointed under Chapter 107 of the Family Code may receive CHRI only if the information relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the child custody evaluator has been appointed to conduct the child custody evaluation. *See id.* § 411.1285(a-1)); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

The requestor is a representative of Family Court Services of Tarrant County and indicates she is performing a child custody evaluation regarding the named individuals. A statutory right of access prevails over a claim under common law privacy. *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); *see also 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). Therefore, if the department determines release of CHRI is consistent with the Family Code, the department must release CHRI, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Fam. Code § 107.103(d) (court ordered child custody evaluation must be performed by individual qualified under Fam. Code § 107.104); *see also id.* § 107.104(b)(3) (individual employed by or under contract with domestic relations office is qualified to conduct child custody evaluation). However, if the department determines release of the information is not 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), (1) (listing entities authorized to receive section 261.201 information); *see also* Open Records Decision No. 440 at 2 (1986); Attorney General Opinions DM 353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM 590 at 4 5 (1986).

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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jxd

Ref: ID# 828267

Enc. Submitted documents

c: Requestor  
(w/o enclosures)