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ATTORNEY GENERAL OF TEXAS

May 8, 2020

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

OR2020-13145

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# 827190 (ORR# PCon3).

The Corpus Christi Police Department (the "department") received a request for all reports related to a named individual. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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). Case numbers 92-044069, 93-069749, 96-034338, and 96-034325 were used or developed in investigations 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 case numbers 92-044069, 93-069749, 96-034338, and 96-034325 are generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a).

However, we note the requestor is a representative of the 13<sup>th</sup> Judicial District Attorney’s Office for the State of New Mexico (the “district attorney’s office”) and may have a right of access to some of the information pursuant to chapter 411 of the Government Code. With respect to case numbers 93-069749, 96-034338, and 96-034325, we find chapter 411 is applicable state law for the purposes of section 261.201. 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. *See* Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or subchapter E-1 to obtain from [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.

*Id.* § 411.087(a)(2). 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 information at issue contains CHRI of the named individual. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may receive such information only for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision Nos. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and, with respect to the information subject to section 261.201 of

the Family Code, for purposes consistent with the Family Code. See Gov't Code §§ 411.083(c), .087(a)(2); see also Fam. Code § 261.201(a).

Section 411.082 of the Government Code defines a “criminal justice agency” as including “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[.]” Gov't Code § 411.082(3)(A). We understand the district attorney’s office is a criminal justice agency as defined by section 411.082 and the information at issue will be used for criminal justice purposes. However, we are unable to determine whether the requestor intends to use the information related to these reports for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI in case numbers 93-069749, 96-034338, and 96-034325 for purposes consistent with the Family Code, then the department must release CHRI from case numbers 93-069749, 96-034338, and 96-034325 and must withhold the remaining information in those reports under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. 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). However, if the department determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the department must withhold case numbers 93-069749, 96-034338, and 96-034325 in their entireties pursuant to section 552.101 in conjunction with section 261.201(a). 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).

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

- (1) a juvenile justice agency, as defined by Section 58.101;
- (2) a criminal justice agency, as defined by Section 411.082, Government Code;
- (3) the child; [or]
- (4) the child's parent or guardian[.]

Fam. Code § 58.008(b), (d); *see id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Case number 92-044069 involves a juvenile offender, so as to fall within the scope of section 58.008(b).

As noted above, the requestor is a representative of the district attorney's office, which is a criminal justice agency as defined by section 411.082 of the Government Code. Section 58.008(d)(2) of the Family Code gives a “criminal justice agency,” as defined by section 411.082 of the Government Code, a right of access to juvenile law enforcement records. *See id.* § 58.008(d)(2). Thus, we find the requestor seeks the information on behalf of a criminal justice agency as contemplated by section 58.008(d) of the Family Code. As discussed above, case number 92-044069 is subject to section 261.201(a) of the Family Code. We find section 58.008(d)(2) is applicable state law allowing disclosure to the requestor. However, we are unable to determine whether the requestor intends to use case number 92-044069 for purposes consistent with the Family Code. Accordingly, if the department determines the requestor intends to use the information for purposes consistent with the Family Code, then the department must release case number 92-044069 to this requestor in its entirety pursuant to section 58.008(d). *See Collins*, 297 S.W.3d at 415; *see also CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544. However, if the department determines the requestor does not intend to use the information for purposes consistent with the Family Code, then the department must withhold report number 92-044069 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be

highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The requestor asks for all information held by the department concerning the named individual. Therefore, to the extent the department maintains any remaining unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

As noted above, section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain CHRI from the DPS about a person. *See Gov't Code* § 411.089(a). As further noted above, the probation office is a criminal justice agency and we understand the requestor intends to use any CHRI, to the extent it exists, for a criminal justice purpose. Therefore, if the department maintains any remaining unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, then the department must release to the requestor the CHRI from any such records, but must withhold any remaining information listing the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. *See Collins*, 297 S.W.3d at 415; *CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544.

In summary, the department must generally withhold case numbers 93-069749, 96-034338, and 96-034325 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a); however, if the department determines the requestor intends to use the CHRI at issue for purposes consistent with the Family Code, then the department must release CHRI from case numbers 93-069749, 96-034338, and 96-034325 pursuant to section 411.089 of the Government Code. The department must generally withhold report number 92-044069 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; however, if the department determines the requestor intends to use the information for purposes consistent with the Family Code, then the department must release case number 92-044069 in its entirety pursuant to section 58.008(d) of the Family Code. If the department maintains any remaining unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, then the department must release to the requestor the CHRI from any such records, but must withhold any remaining information listing the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy.

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/be

Ref: ID# 827190

Enc. Submitted documents

c: Requestor  
(w/o enclosures)