



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2020

Ms. Sally Ortiz
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2020-13789

Dear Ms. Ortiz:

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# 832321 (ORR# P007904).

The Plano Police Department (the "department") received a request for information related to a specified incident involving 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 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, we note the requestor is a representative of the Garland Police Department and may have a right of access to some of the information pursuant to chapter 411 of the Government Code. 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). The requestor represents a criminal justice agency as defined by section 411.082 and states the information at issue will be used for criminal justice purposes. However, we are unable to determine whether the requestor intends to use the CHRI for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then the department must release CHRI and must withhold the remaining information 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 CHRI for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety 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).

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# 832321

Enc. Submitted documents

c: Requestor
(w/o enclosures)