



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2020

Mr. Robert Carroll
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2020-22196

Dear Mr. Carroll:

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# 846480 (Ref. No. P003673-071020).

The City of Odessa (the "city") received a request for a specified incident report involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

[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). Upon review, we agree the submitted information was used or developed in an investigation of alleged child abuse conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 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). You do not indicate the city has adopted a rule that would permit the release of the submitted information. Accordingly, we conclude the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, section 261.201(a) 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.

We note the requestor is a representative of the Enforcement Division of the Texas Board of Nursing (the “board”) and, thus, may have a right of access to some of the information at issue. Section 411.125 of the Government Code provides:

The [board] is entitled to obtain from the [Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by the [DPS] that relates to a person who:

- (1) is an applicant for or a holder of a license by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

See Gov’t Code § 411.125. In addition, section 411.087(a) of the Government Code provides, in pertinent part:

[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). 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). In this instance, the submitted information contains CHRI pertaining to the individual named in the request, and the requestor may have a right of access to it under sections 411.087 and 411.125. However, the requestor does not indicate, and we are not otherwise able to determine, whether release of the CHRI is consistent with the Family Code or if the arrestee named in the request is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the arrestee. Accordingly, we must rule in the alternative. If the city determines release of the CHRI is consistent with the Family Code and the arrestee named in the request is an individual described by section 411.125 of the Government Code, then the requestor is authorized to obtain the named individual’s CHRI contained in the submitted information and the city must release the CHRI to this requestor. Although you also raise section 552.108 of the Government Code for such information, a specific statutory right of access prevails over the general exceptions in the Act. *See* Open Records Decision Nos. 623 at 4 (1994), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 525 at 3 (1989), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the remaining information is confidential and the city must withhold it under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ However, if the city determines release is not consistent with the purposes of the Family Code or if the named individual is not an individual described by section 411.125 of the Government Code, then the requestor does not have a right of access to the named individual’s CHRI and the city 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.²

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/gw

Ref: ID# 846480

Enc. Submitted documents

c: Requestor
(w/o enclosures)