



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 28, 2020

Ms. Jeana Bellinger  
City Secretary  
City of Brenham  
P.O. Box 1059  
Brenham, Texas 77834-1059

OR2020-24338

Dear Ms. Bellinger:

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# 845973 (COB ID# 20-07-08).

The City of Brenham (the "city") received a request for information pertaining to a named individual. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.<sup>1</sup>

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

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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 by the city's police department (the "department") of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *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). As the city does not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption and based on our review, we determine the submitted information is generally confidential pursuant to section 261.201. 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." *Id.* § 261.201(a).

Chapter 411 of the Government Code constitutes "applicable state law" in this instance. We note the requestor is an investigator with the State Commission on Judicial Conduct (the "commission"). Section 411.140(a) of the Government Code provides, "[the commission] is entitled to obtain from the [Department of Public Safety ("DPS")] criminal history record information [{"CHRI"}] maintained by [DPS] that relates to a person who is: (1) a judge who is the subject of an investigation or proceeding under Chapter 33 [of the Government Code]; or (2) the complainant or a witness in an investigation or a proceeding under Chapter 33." *See* Gov't Code § 411.140(a). In addition, section 411.087(a)(2) of the Government Code provides,

(a) Unless otherwise authorized by Subsection (e), 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, when read together, sections 411.087 and 411.140 of the Government Code may grant this requestor a right of access to CHRI in the submitted incident report.

The requestor states she seeks access to information relating to the named individual, who is a judge, as part of the commission's ongoing investigation involving the named individual. The requestor indicates this investigation is being conducted pursuant to chapter 33 of the Government Code. Accordingly, the requestor generally has a right of access under section 411.140 of the Government Code to CHRI regarding the named judge. However, section 261.201(a) states the release must be for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). This office cannot determine whether release of the information is consistent with the Family Code. Therefore, if the city determines release of the CHRI is consistent with the Family Code, then the city must release CHRI to this requestor and must withhold the remainder of the information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines release is not consistent with the Family Code, then 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.

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,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/be

Ref: ID# 845973

Enc. Submitted documents

c: Requestor  
(w/o enclosures)