



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 27, 2022

Ms. Lindsey M. Hale
Counsel for the City of Cleburne
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-15350

Dear Ms. Hale:

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# 950321.

The City of Cleburne (the "city"), which you represent, received a request for information pertaining to a named individual, including information pertaining to a specified incident. You claim some information is not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments 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). Portions of the submitted information, which you have indicated, were used or developed in investigations of alleged or suspected child abuse or neglect conducted by the Cleburne Police 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 city 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 city must generally withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, the Family Code provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *See* Fam. Code 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance.

As a representative of the Texas Military Department, we understand the requestor is also a representative of the adjutant general of the Texas military forces (the “adjutant general”) and has a right of access to some of the information at issue. Section 411.121(b)(1) of the Government Code provides, “[t]he adjutant general is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a person who is (1) a member of the Texas military forces[.]” Gov’t Code § 411.121(b)(1); *see also id.* § 437.001(1) (“[a]djutant general’ means the military commander of the Texas military forces.”), (13) (“‘Texas Military Department’ means the state agency charged with administrative activities in support of the Texas military forces.”), (14) (“‘Texas military forces’ means the Texas National Guard, the Texas State Guard, and any other military force organized under state law.”). In addition, section 411.087(a)(2) of the Government Code reads as follows:

¹ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information. Further, in this instance, as we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

(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). The requestor states she is seeking information about a member of the Texas Military Department. Thus, the requestor is authorized to obtain the submitted CHRI pursuant to sections 411.087(a)(2) and 411.121(b)(1) of the Government Code. *See id.* § 411.087(a)(2), .121(b)(1). A specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).*

We are unable determine whether the requestor intends to use the information at issue for purposes consistent with the Family Code. *See Gov’t Code §§ 411.083(c), .087(a)(2); see also Fam. Code § 261.201(a).* Accordingly, we must rule conditionally. If the city determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then the city must release the CHRI of the named individual pursuant to section 411.087(a)(2) of the Government Code, but withhold the remaining information you indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold the information you indicated 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) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).*

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov’t Code § 552.108(a)(2).* A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The city states Case Number 14-03842 relates to a closed

criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the Case Number 14-03842.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the city may generally withhold Case Number 14-03842 under section 552.108(a)(2) of the Government Code. However, as noted above, the requestor has a right of access to some of the information at issue. Thus, the city must release the CHRI within Case Number 14-03842 pursuant to sections 411.087(a)(2) and 411.121(b)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the basic information, which you marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold the information you indicated in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then the city must release the CHRI of the named individual pursuant to section 411.087(a)(2) of the Government Code, but withhold the remaining information you indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the basic information and the CHRI, which must be released to this requestor, the city may withhold Case Number 14-03842 under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city must withhold the information you marked 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,

Colin Henry
Attorney
Open Records Division

CEH/jxd

Ref: ID# 950321

Enc. Submitted documents

c: Requestor
(w/o enclosures)