



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 5, 2022

Ms. Karen Stack  
Legal & Legislative Services Manager  
City of Brenham  
P.O. Box 1059  
Brenham, Texas 77834-1059

OR2022-23283

Dear Ms. Stack:

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# 964582 (File No. 22-05-44).

The City of Brenham (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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. 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). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *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 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, the requestor is a representative of the Brenham Housing Authority. Section 1437d(q)(1)(A) of title 42 of the United States Code, the federal Housing Opportunity Program Extension Act of 1996, provides, “[n]otwithstanding any other provision of law, . . . the National Crime Information Center, police departments, and other law enforcement agencies shall, upon request, provide information to public housing agencies regarding the criminal conviction records of adult applicants for, or tenants of, covered housing assistance for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). Section 1437d(q)(1)(C) provides, “[a] law enforcement agency described in subparagraph (A) shall provide information under this paragraph relating to any criminal conviction of a juvenile only to the extent that the release of such information is authorized under the law of the applicable State, tribe, or locality.” *Id.* § 1437d(q)(1)(C). In Open Records Decision No. 655 (1997), this office concluded a local housing authority is a noncriminal justice agency authorized by federal statute to receive criminal history record information (“CHRI”). ORD 655 at 4. CHRI consists of “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.” Gov’t Code § 411.082(2). The Department of Public Safety (the “DPS”) is required to provide CHRI to a noncriminal justice agency authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. *Id.* § 411.083(b)(2). Nevertheless, the federal law limits the purposes for which a public housing authority may request CHRI. The federal law provides, among other things, CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. *See* 42 U.S.C. § 1437d(q)(1)(A); ORD 655 at 3-5. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law[.]” 42 U.S.C. § 1437d(q)(1)(A). Based on this language, we find section 1437d(q)(1)(A) prevails over section 261.201 of the Family Code. *Cf. Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law).

The requestor states the submitted information will be used for purposes of applicant screening, lease enforcement, or eviction. Accordingly, the city must release any CHRI of applicants or tenants of public housing within the information in accordance with section 1437d(q)(1) of chapter 42 of the United States Code. *See also* 24 C.F.R. § 5.903 (describing public housing authorities' access to criminal records). The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jxd

Ref: ID# 964582

Enc. Submitted documents

c: Requestor  
(w/o enclosures)