



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2022

Ms. Lauren Azopardi
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2022-25381

Dear Ms. Azopardi:

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# 966853 (PIR# E003314).

The City of Fort Worth (the "city") received a request for specified police records. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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. Section 552.101 encompasses information protected by section 261.201 of the Family Code, which provides, in relevant part, as follows:

¹We note the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office with respect to some of the submitted information. *See* Gov't Code § 552.301(e) (requiring governmental body to submit within fifteen business days of receiving request for information comments explaining applicability of raised exceptions, copy of request for information, signed statement of date governmental body received request or evidence sufficient to establish date, and copy of information governmental body seeks to withhold or representative samples). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the information at issue, notwithstanding the city's violation of section 552.301 in requesting this decision.

(a) [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

(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 find 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 Probation and Pretrial Services for the United States District Court of the Northern District of Texas (the “probation office”) and may have a right of access to some of the submitted information. Section 261.201 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. 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.” Gov’t Code § 411.089(a); see also *id.* § 411.083(b)(1) (providing DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [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). A criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. See id. §§ 411.083(c), .087(b); see also Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Section 411.082 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). “Administration of criminal justice” has the meaning assigned to it by article 66.001 of the Code of Criminal Procedure. See id. § 411.082(1). Article 66.001 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Crim. Proc. Code art. 66.001(1).

We note the probation office is a criminal justice agency as defined by section 411.082. See Gov’t Code § 411.082(3)(A). We also understand the probation office intends to use the information at issue for a criminal justice purpose. Thus, the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only 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, if the department determines release of the CHRI is not consistent with the Family Code, then the department 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. 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. If the department determines release of the CHRI is consistent with the Family Code, then the department must release the CHRI, but must withhold the remaining information under section 552.101 of the Government Code in conjunction 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,

Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/mo

Ref: ID# 966853

Enc. Submitted documents

c: Requestor
(w/o enclosures)