



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 31, 2022

Ms. Bobbie K. Risner  
Assistant District Attorney  
Harris County  
500 Jefferson Street, Suite 600  
Houston, Texas 77002

OR2022-26431

Dear Ms. Risner:

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# 967075 (Ref. No. 2022-06-0038).

The Harris County District Attorney's Office (the "district attorney's office") received a request for the entire case file pertaining to a specified cause number. 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, a portion of which consists of a representative sample.<sup>1</sup>

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:

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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.

(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. You do not indicate the district attorney’s office 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 district attorney’s office 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 Federal Public Defender’s Office of the Western District of Texas (the “public defender’s office”). 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. Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender’s office are entitled to obtain from the [Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by the [DPS] that relates to a criminal case in which an attorney compensated by . . . the public defender’s office has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a) 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 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). We note the information at issue contains CHRI. Accordingly, this requestor is authorized to obtain the CHRI in the information at issue from the district attorney’s office pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if the CHRI relates to a criminal case in which an attorney compensated by the public defender’s office is appointed, but only for purposes consistent with the Family Code. *See id.* §§ 411.087(a)(2), .1272; *see also* Fam. Code § 261.201(a).

We are unable to determine whether the CHRI at issue relates to a criminal case in which an attorney compensated by the public defender’s office is appointed, or whether the requestor intends to use the CHRI in the information at issue for purposes consistent with the Family Code. Although you also raise section 552.108 of the Government Code, 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). Therefore, if the district attorney’s office determines the information at issue relates to a criminal case in which an attorney compensated by the public defender’s office is appointed and release of the information is consistent with the Family Code, then the district attorney’s office must release CHRI from the submitted information and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the district attorney’s office determines the submitted information does not relate to a criminal case in which an attorney compensated by the public defender’s office is appointed, or if the district attorney’s office determines the requestor does not intend to use the CHRI in the information at issue for purposes consistent with the Family Code, then the district attorney’s office must withhold the submitted information in its entirety 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# 967075

c: Requestor