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ATTORNEY GENERAL OF TEXAS

November 8, 2022

Ms. Montana Anderson
Litigation & PIA Paralegal
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2022-34911

Dear Ms. Anderson

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# 980341.

The City of Abilene (the "city") received two requests from two requestors for information related to two specified incidents. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts "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 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.

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 261.201(a), (k), (l)(2). Information related to report 22-036761 was used or developed in an investigation of alleged child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Thus, report 22-036761 is within the scope of section 261.201(a). Accordingly, we find report 22-036761 generally must be withheld from the second requestor under section 552.101 in conjunction with section 261.201 of the Family Code. However, we note the first requestor is a parent of one of the child victims listed in the information at issue. Further, the first requestor is not alleged to have committed the abuse or neglect. Thus, the first requestor has a right of access to the information at issue under section 261.201(k), and report 22-036761 may not be withheld from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). We will address the applicability of other exceptions for the first requestor.

Section 552.101 also encompasses section 58.008 of the Family Code, which provides, in part, the following:

Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Id. § 58.008(b); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find the submitted information involves juvenile suspects engaging in delinquent conduct for the purposes of section 58.008(b). Thus, the city generally must withhold the remaining information from the second requestor under section 552.101 in conjunction with section 58.008(b) of the Family Code. However, the first requestor is a parent of one of the juvenile offenders at issue and has a right of access to the submitted information pursuant to section 58.008(d). *See id.* § 58.008(d). Therefore, the city may not withhold the submitted information from the first requestor under section 552.101 on the basis of section 58.008(b). *See id.* § 58.008(d). Nevertheless, section 58.008(e)(2) provides information that is subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.008(e)(2). Thus, we will consider your remaining arguments for the submitted information with respect to the first requestor.

However, the second requestor is a representative of the Abilene Housing Authority (the “housing authority”). The Texas Department of Public Safety (“DPS”) is required to provide criminal history record information (“CHRI”) to a noncriminal justice agency that is authorized to receive CHRI pursuant to a federal statute, executive order, or state statute. *See* Gov’t Code § 411.083(b)(2). In Open Records Decision No. 655 (1997), this office concluded these federal statutes authorize local housing authorities to obtain the criminal history record information (“CHRI”) of adult and juvenile applicants and tenants. Section 1437d(q)(1)(A) of title 42 of the United States Code provides “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, public housing for purposes of applicant screening, lease enforcement, and eviction.” 42 U.S.C. § 1437d(q)(1)(A). Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from

DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency].” Gov’t Code § 411.087(a)(2). Thus, a housing authority is also authorized to obtain CHRI from a local criminal justice agency such as the city’s police department. *See* ORD 655 at 4; *see also* Gov’t Code §§ 411.083(b)(2), .087(a). 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.” *Id.* § 411.082(2). Federal law limits the purposes for which a public housing authority may request CHRI. Federal law provides that (1) public housing agencies may receive CHRI for adult applicants for public housing or for adult tenants of public housing, and (2) CHRI may only be used for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q)(1)(A). Juvenile justice information is confidential but may be released to “a noncriminal justice agency authorized by federal statute or federal executive order to receive juvenile justice record information[.]” Fam. Code § 58.106(a)(3). Because housing authorities are authorized to obtain adult CHRI under sections 1437d(q)(1)(A) and 411.083(b)(2), they are also authorized to obtain similar information regarding juveniles. Section 1437d(q)(1)(A) states a housing authority shall be provided access to the CHRI “[n]otwithstanding any other provision of law.” *Id.* Based on this language, we find section 1437d(q)(1)(A) prevails over sections 261.201 and 58.008 of the Family Code and section 552.108 of the Government 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 second requestor does not indicate whether the requested information will be used for purposes of applicant screening, lease enforcement, or eviction. Thus, we must rule conditionally. If the city determines the submitted information will be used for purposes of applicant screening, lease enforcement, or eviction, then the city must release to the second requestor any CHRI of applicants or tenants of public housing in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and withhold the remainder of report number 22-036761 under section 552.101 in conjunction with section 261.201 of the Family Code and the remaining information under section 552.101 in conjunction with section 58.008(b) of the Family Code. *See also* 24 C.F.R. § 5.903 (describing public housing authorities’ access to criminal records). However, if the city determines the information will not be used for purposes of applicant screening, lease enforcement, or eviction, then the city must withhold report 22-036761 from the second requestor under section 552.101 in conjunction with section 261.201 of the Family Code and the remaining information from the second requestor under section 552.101 in conjunction with section 58.008(b) of the Family Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to pending criminal investigations. Based upon this representation, we conclude the

release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, with the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code from the first requestor.

In summary, if the city determines the submitted information will be used for purposes of applicant screening, lease enforcement, or eviction, then the city must release to the second requestor any CHRI of applicants or tenants of public housing in accordance with section 1437d(q)(1) of chapter 42 of the United States Code and withhold the remainder of report number 22-036761 under section 552.101 in conjunction with section 261.201 of the Family Code and the remaining information under section 552.101 in conjunction with section 58.008(b) of the Family Code. However, if the city determines the information will not be used for purposes of applicant screening, lease enforcement, or eviction, then the city must withhold report 22-036761 from the second requestor under section 552.101 in conjunction with section 261.201 of the Family Code and the remaining information from the second requestor under section 552.101 in conjunction with section 58.008(b) of the Family Code. With the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code from the first requestor.

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,

Anthony Crabtree
Attorney
Open Records Division

A1C/eb

Ref: ID# 980341

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)