



July 30, 2001

Ms. Elaine S. Hengen
Assistant City Attorney
Office of the City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2001-3283

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150029.

The El Paso Police Department (the "department") received a request for all offense, incident, and investigative reports, including witness statements and confessions, relating to a certain individual in conjunction with a certain charge and date. The requestor in this case is an investigator for the State Board for Educator Certification (the "board"), which is conducting an investigation relating to the individual whose records held by the department are sought. You inform us that the department released to the requestor a redacted copy of the incident report and the complaint affidavits. You claim that the remainder of the requested information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have reviewed the submitted information.

You contend that the submitted police offense report and related records are excepted from required public disclosure under section 552.108(a) as "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." However, in this instance, we believe that the requestor has a statutory right of access to the information at issue. Section 22.082 of the Education Code provides that "[t]he State Board for Educator Certification shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to an applicant for or holder of a certificate." We further note that subchapter F of chapter 411 of the Government Code provides a right of access for the board to obtain "criminal history record information" ("CHRI") from the Texas Department of Public Safety (the "DPS") and from other criminal justice agencies. For the purposes of subchapter F of

chapter 411 of the Government Code, 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 charges and their dispositions.” Gov’t Code § 411.082(2). Section 411.090 of the Government Code provides that

(a) The State Board for Educator Certification is entitled to obtain from the department any criminal history record information maintained by the department about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.

Furthermore, pursuant to section 411.087 of the Government Code, an agency which is entitled to obtain CHRI from the DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency].” Gov’t Code § 411.087(a)(2).

In this instance, the requestor is an investigator of the board, and the subject of this request is an applicant for or holder of an educator certificate. The requestor specifically seeks “all offense, incident, and investigative reports, including witness statements and confessions” of a named individual, referenced by charge and date of arrest. Accordingly, we conclude that when read together, section 22.082 of the Education Code and sections 411.087 and 411.090 of the Government Code give the board a statutory right of access to the requested information. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Open Records Act). Therefore, the department must release all of the requested information to the requestor.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

¹This office has concluded that information may be transferred between governmental bodies that are subject to the act without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Open Records Decision No. 655 at 8 (1997). Thus, the release of information by one agency to another agency is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information, or for those of section 552.352, which provides criminal penalties for the release of information that is considered to be confidential. *See id.*

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

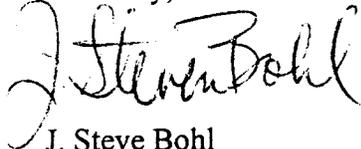
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



J. Steve Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 150029

Enc: Submitted documents

c: Mr. Doug Phillips
Staff Investigator
Professional Discipline Unit
State Board for Educator Certification
101 Trinity
Austin, Texas 78701-2603
(w/o enclosures)