



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 12, 2008

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2008-16957

Dear Ms. Armstrong:

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# 329898 (DPD ORR 2008-6706).

The Dallas Police Department (the "department") received a request from an investigator for the Texas Education Agency (the "TEA") for information relating to two specified incidents involving a named individual. You state that some of the requested information has been released. You claim that 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.<sup>1</sup>

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. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(a) The 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); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We find that the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). Section 261.201 also provides, however, that 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).

We note that section 22.082 of the Education Code constitutes “applicable state law” in this instance. Section 22.082 provides that the TEA “may obtain from any law enforcement or criminal justice agency all criminal history record information [“CHRI”] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.” Act of May 29, 1995, 74<sup>th</sup> Leg., R.S., ch. 260, § 1, 1995 Tex. Gen. Laws 2007, 2285, *amended by* Act of May 28, 2007, 80<sup>th</sup> Leg., R.S., ch. 1372, § 6, 2007 Tex. Sess. Law Serv. 4658, 4659. 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); *see also id.* §§ 411.090 (SBEC is entitled to obtain CHRI from Department of Public Safety [“DPS”] about a person who has applied to [SBEC] for certificate under subchapter B, chapter 21, Education Code), 411.087(a)(2) (agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in later statute, later use of term is same as previously defined).

As previously noted, the requestor is an investigator for the TEA, which has assumed the duties of the SBEC. The requestor states that the TEA is conducting an investigation of an

individual who either has applied for or currently holds educator credentials.<sup>2</sup> The requestor seeks access to all offense, incident, and investigative reports regarding a charge against the named individual. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the individual or all records contained in a closed criminal investigation file relating to the individual. You do not inform us, and the submitted information does not otherwise reflect, whether the criminal investigation to which the information pertains is closed. Accordingly, we must rule in the alternative.

Thus, if the submitted information is contained in a closed investigation file, and if the department determines that release of the information is consistent with the Family Code, then the submitted information must be released to the requestor in its entirety pursuant to section 22.082 of the Education Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). If the information is not contained in a closed investigation file, and the department determines that the release of CHRI is consistent with the Family Code, then the department must release information from the submitted documents that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *Id.* In that event, the department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the submitted information is not contained in a closed investigation file, and the department determines that the release of CHRI is not consistent with the Family Code, then the submitted information must be withheld from the requestor in its entirety under section 552.101 in conjunction with section 261.201.<sup>3</sup> *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive Fam. Code § 261.201 information).

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

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<sup>2</sup>The Seventy-ninth Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to the TEA, effective September 1, 2005.

<sup>3</sup>As we are able to make these determinations, we do not address your other claim under section 552.101. Because this requestor may have a special right of access to some or all of the submitted information, the department must again seek a decision from this office if it receives another request for this same information from another requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

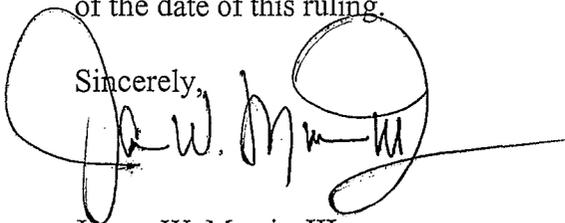
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ma

Ref: ID# 329898

Enc: Submitted documents

c: Requestor  
(w/o enclosures)