



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2009

Ms. Carolyn M. Hanahan  
General Counsel  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugarland, Texas 77479

OR2009-11097

Dear Ms. Hanahan:

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# 351561.

The Fort Bend Independent School District (the "district") received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named district employee and a specified incident. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information, which consists of a district police department report and supporting information pertaining to the specified incident, is subject to section 552.101 of the Government Code.<sup>1</sup> Section 552.101 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 other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). We note that the district's police department is an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find the submitted information pertains to an investigation of alleged child abuse and is, therefore, within the scope of section 261.201 of the Family Code. *See id.* § 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *see also 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). You have not indicated that the district's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential 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)* (construing statutory predecessor to section 261.201). Section 261.201(a) provides, however, that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a).

We note that section 22.082 of the Education Code constitutes "applicable state law" in this instance. Section 22.082 of the Education Code 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." Educ. Code § 22.082. 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." Gov't Code § 411.082(2); *see also id.* §§ 411.0901 (TEA entitled to obtain CHRI from Department of Public Safety ("DPS") about a person who is employed or is an applicant for employment by a school district), 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 [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined).

In this instance, the requestor is an investigator with the TEA, which has assumed the duties of the State Board for Educator Certification (the "SBEC").<sup>2</sup> The requestor states the TEA is conducting an investigation of an individual who has applied for or currently holds educator credentials. Thus, sections 22.082 and 411.087 are applicable state laws in this instance. You inform this office that the submitted information is not contained in a closed criminal investigation file, but rather pertains to a pending criminal investigation by the district's police department. We note that this office cannot determine whether release of the CHRI is consistent with the Family Code.

Consequently, if the district determines that release of the CHRI is consistent with the Family Code, the district must release information from the submitted documents to this requestor that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.<sup>3</sup> In that instance, the district must withhold the remainder of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the district determines that release is not consistent with purposes of the Family Code, the district must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *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 section 261.201 information).

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.

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<sup>2</sup>The 79<sup>th</sup> 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>Although the district contends that the submitted information, including CHRI, is excepted under section 552.108 of the Government Code, this office has found specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). As our ruling is dispositive, we need not address your argument under section 552.108 for the submitted information.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

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LRL/eeg

Ref: ID# 351561

Enc. Submitted documents

c: Requestor  
(w/o enclosures)