



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2014

Ms. Michele Freeland
Legal Assistant
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-16526

Dear Ms. Freeland:

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# 537881 (PIR# 14-2813).

The Texas Department of Public Safety ("DPS") received a request for information pertaining to a specified arrest from an investigator with the Texas Education Agency ("TEA"). DPS claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

[T]he following information is confidential, is not subject to public release under [the Act], 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:

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(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). Upon review, we find the submitted information was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, this information is within the scope of section 261.201 of the Family Code. You do not indicate DPS has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we determine the submitted information is generally confidential pursuant to section 261.201 of the Family Code.²

However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Section 22.082 of the Education Code constitutes “applicable state law.” Section 22.082 provides 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 [of the Education Code].” Educ. Code § 22.082. 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.* §§ 411.087(a)(2) (agency entitled to obtain CHRI from DPS also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”), .090 (State Board for Educator Certification (“SBEC”) is entitled to obtain CHRI from DPS about a person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code), .0901 (TEA is entitled to obtain CHRI from DPS relating to certain employees of schools); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. 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 later statute, later use of term is same as previously defined).

²As our ruling is dispositive, we do not address your argument to withhold this information.

The requestor is an investigator with TEA, which has assumed the duties of SBEC.³ TEA is conducting an investigation of the named individual who we understand has applied for or currently holds educator credentials. You state the submitted information relates to a pending criminal investigation of the named individual. Accordingly, TEA has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual in the submitted information.⁴ Although you seek to withhold the submitted information under section 552.108(a)(1) of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, if DPS determines the release of the CHRI in the submitted information is consistent with the Family Code, then DPS must (1) release information from the submitted information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions and (2) withhold the remainder of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if DPS determines the release of the CHRI is not consistent with the Family Code, then DPS 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. *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); *see also* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive information under 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 http://www.texasattorneygeneral.gov/open_orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to TEA, effective September 1, 2005.

⁴The requestor also claims a right to the information at issue under sections 261.308 and 261.406 of the Family Code. However, these statutes apply to information held by the Department of Family and Protective Services and not DPS. *See* Fam. Code §§ 261.308, 261.406.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 537881

Enc. Submitted documents

c: Requestor
(w/o enclosures)