



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 18, 2014

Mr. Steven M. Kean  
Deputy City Attorney  
City of Tyler  
P.O. Box 2039  
Tyler, Texas 75710

OR2014-16581

Dear Mr. Kean:

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# 536678 (Tyler PD File: LegalDesk #FWT-886442).

The Tyler Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports regarding a named individual, including witness statements and confessions and a specified case. You state the department will release some responsive information. You also inform us you will redact certain information in accordance with section 552.147 of the Government Code.<sup>1</sup> You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Upon review, we find the submitted information was developed in an investigation conducted pursuant to chapter 261 of the Family Code and is confidential under section 261.201(a) of the Family Code.

However, as noted above, the requestor is an investigator with the TEA, which has assumed the duties of the State Board for Educator Certification (“SBEC”).<sup>2</sup> Section 261.201(a) provides 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). In this instance, section 22.082 of the Education Code constitutes applicable state law. Section 22.082 provides 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 [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.”<sup>3</sup> Gov’t Code § 411.082(2); *see also id.* §§ 411.0901 (TEA is entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) relating to certain employees of schools), .090 (SBEC is entitled to obtain CHRI from DPS about person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code), .087(a)(2) (agency entitled to obtain CHRI

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<sup>2</sup>The 79th 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>We note CHRI does not consist of information subject to section 552.130 of the Government Code.

from DPS 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 later statute, later use of term is same as previously defined).

The requestor states the TEA is conducting an investigation of the named individual who either has applied for or currently holds educator credentials. The requestor seeks access to information relating to a specific case involving the named individual.<sup>4</sup> You inform us the submitted information relates to a pending case. Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to CHRI regarding the named individual. Although you also seek to withhold such information under section 552.108 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 on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Consequently, if the department determines release of the CHRI is consistent with the Family Code, the department 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>5</sup> In that instance, the remainder of the submitted information is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. If, however, the department determines release is not consistent with the Family Code, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>6</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), (k) (listing entities authorized to receive Fam. Code § 261.201 information).

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<sup>4</sup>The 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 Texas Department of Family and Protective Services and not the department. *See* Fam. Code §§ 261.308, .406.

<sup>5</sup>As noted, the requestor has a special right of access, beyond that of the general public, to any information being released in this instance. Therefore, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.

<sup>6</sup>As our ruling is dispositive, we do not address your argument under section 552.130 of the Government 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](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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 536678

Enc. Submitted documents

c: Requestor  
(w/o enclosures)