



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 1, 2015

Mr. John Ohnemiller  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2015-06167

Dear Mr. Ohnemiller:

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# 558375 (Midland ID# 15834).

The Midland 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 a specified report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You state the requested information was the subject of a previous request for information from the same requestor, in response to which this office issued Open Records Letter No. 2013-07446 (2013).<sup>2</sup> You inform us the facts or circumstances on which the prior ruling

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<sup>1</sup>Although you raise section 552.117 of the Government Code, we note section 552.1175 is the correct exception to raise for information the department does not hold in its capacity as employer.

<sup>2</sup>In Open Records Letter No. 2013-07446, we determined the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual and concluded the following: 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. 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.

was based have changed, because the case is now closed. Accordingly, we agree the department may not rely on Open Records Letter No. 2013-07446 as a previous determination.<sup>3</sup> Therefore, we address your arguments.

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 section encompasses section 261.201(a) of the Family Code, which 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:

- (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 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation by the department under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201); *see also id.* § 101.003(a) (defining “child” 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 the department 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 confidential pursuant to section 261.201(a) of the Family Code.

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 the TEA “may obtain from any law enforcement or criminal justice agency . . . 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. As noted above, the requestor is an

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<sup>3</sup>*See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

investigator with the TEA. The TEA is conducting an investigation of the named individual, whom we understand has applied for or currently holds educator credentials. You inform us the department's investigation is now closed. Thus, section 22.082 authorizes the requestor to obtain the submitted information in its entirety. Although you raise section 552.1175 of the Government Code for a portion of the submitted information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.1175. *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 information at issue is for purposes consistent with the Family Code, then the department must release the submitted information in its entirety to the requestor pursuant to section 22.082 of the Education Code. If the department determines release of the information at issue is not for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety under 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) (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), (i), (k) (listing circumstances under which section 261.201 information can be released).

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# 558375

Enc. Submitted documents

c: Requestor  
(w/o enclosures)