



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2016

Mr. Richard A. McCracken
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-06806

Dear Mr. McCracken:

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# 602782 (CFW PIR No. W048306).

The City of Fort Worth (the "city") received a request from an investigator with the Texas Education Agency (the "TEA") for all records regarding a specified report number involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

- (a) [T]he 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). Upon review, we agree the submitted information was used or developed in an investigation of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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), 261.001(1) (defining “abuse” for purposes of chapter 261). As you do not indicate the city’s police department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

However, section 261.201(a) also provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 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 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 Texas Department of Public Safety (“DPS”) also authorized to “obtain from any other criminal justice agency in this state [CHRI] 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).

You inform us the requestor is an employee at the Educator Investigations Division of the TEA, which has assumed the duties of SBEC,¹ and provide documentation demonstrating the named individual currently holds educator credentials and is under review by the SBEC Professional Discipline Unit. You state the submitted information relates to a pending criminal prosecution of the named individual. Accordingly, the TEA has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual in the submitted information. Although you seek to withhold the CHRI 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). However, as noted above, section 261.201(a) states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office is unable to determine whether release of the information is consistent with the Family Code.

Therefore, if the city determines the release of the CHRI in the submitted information is consistent with the Family Code, then the city must (1) release 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 the city determines the release of the CHRI is not consistent with the Family Code, then the city 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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Nottingham". The signature is stylized and cursive.

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/som

Ref: ID# 602782

Enc. Submitted documents

c: Requestor
(w/o enclosures)