



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2016

Mr. Omar A. De La Rosa
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2016-11417

Dear Mr. De La Rosa:

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# 610588 (City ID Nos. 16-1026-7210, 16-102607254).

The El Paso Police Department (the "department") received two requests from different requestors. The first requestor, an investigator with the Texas Education Agency (the "TEA"), seeks information pertaining to a specified incident involving a named individual, and all other records pertaining to the named individual. The second requestor seeks information pertaining to the specified incident. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions the department claims 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. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in part, as follows:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find 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). Accordingly, we find the submitted information is subject to chapter 261 of the Family Code. As the department does not indicate it 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, with respect to the first requestor, 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). We note, however, the second requestor is a parent of the child victim at issue in the submitted information and this requestor is alleged to have committed the alleged abuse. Thus, this requestor does not have a right of access to the submitted information under section 261.201(k). *Id.* § 261.201(k). Therefore, the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.¹

Section 261.201(a) provides, however, 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

¹As our ruling is dispositive, with respect to the second requestor, we need not address the department’s remaining arguments against disclosure of this information.

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.* §§ 411.0901 (TEA is entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) relating to certain employees of schools), .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), .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]”); *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).

In this instance, the first requestor is an investigator with the TEA, which has assumed the duties of the SBEC.² The first requestor states the TEA is conducting an investigation of the named individual who either has applied for or currently holds educator credentials. The first requestor seeks access, in part, to information relating to a specific case involving the named individual.³ The department informs us the submitted information relates to a pending case. Accordingly, the first requestor may have a right of access under section 22.082 of the Education Code to CHRI regarding the named individual. Although the department also seeks to withhold such information under sections 552.103 and 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.⁴ In that instance, the remainder of the submitted information is confidential under section 261.201 of the Family

²The 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.

³The first 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.

⁴As noted, the first 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.

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 from the first requestor 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); Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive Fam. Code § 261.201 information). In either instance, as previously mentioned, the department must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 610588

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)