



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2016

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
The City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2016-03356

Dear Ms. Honey:

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# 599456 (ORR# W047712).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual and a specified arrest. The department claims the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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). The department asserts the requested 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). Upon review, we find the information is within the scope of section 261.201 of the Family Code. Accordingly, the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code.¹

However, section 261.201(a) provides information encompassed by this section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We note section 22.082 of the Education Code constitutes such “applicable state law.” Section 22.082 provides the Texas Education Agency (“TEA”) “may obtain from any law enforcement or criminal justice agency all criminal history record information 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. Criminal history record information 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 criminal history record information from Texas Department of Public Safety (“DPS”) also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”); Gov’t Code §§ 411.090 (State Board for Educator Certification (“SBEC”) entitled to obtain criminal history record information from DPS about person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code), .0901 (TEA entitled to obtain criminal history record information from DPS relating to certain employees of schools); *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).

¹As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

The requestor is an investigator with TEA, which has assumed the duties of SBEC.² The requestor states TEA is conducting an investigation of the named individual who either has applied for or currently holds educator credentials. The department states the submitted information relates to an ongoing criminal investigation. The requestor seeks access to information relating to a specific case involving the named individual.³ Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to criminal history record information regarding the individual. We note a statute governing the release of specific information prevails over the common law and exceptions to disclosure found in the Act. *Center Point Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no conflicting or controlling statutory law); Attorney General Opinion DM-146 at 3 (1992); Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome Act's general exceptions to disclosure). As discussed above, section 261.201(a) states any release must be "for purposes consistent with the Family Code." *See* Fam. Code § 261.201(a). Thus, if the department determines the release of the information at issue is consistent with the Family Code, then the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 22.082 of the Education Code, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the release of the information at issue is not 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 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.

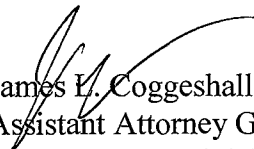
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to TEA, effective September 1, 2005.

³The requestor also claims a right to the information at issue under sections 261.308 and 261.406 of the Family Code. However, these sections apply to information held by the Department of Family and Protective Services, and not the department. *See* Fam. Code §§ 261.308, .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/bhf

Ref: ID# 599456

Enc. Submitted documents

c: Requestor
(w/o enclosures)