



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2016

Mr. Christopher Garza
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2016-05187

Dear Mr. Garza:

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# 600812.

The Brazoria County Sheriff's Office (the "sheriff's office") received a request from an investigator with the Texas Education Agency (the "TEA") for information regarding specified charges against a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in relevant part:

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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the submitted information pertains to an investigation of alleged or suspected child abuse and, thus, falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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 of the Family Code). 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. Given that assumption, and based on our review, we determine that the submitted information is generally confidential pursuant to section 261.201 of the Family Code. However, 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).

Section 22.082 of the Education Code constitutes applicable state law in this instance. Section 22.082 provides the State Board of Educator Certification (the “SBEC”) “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 criminal history record information maintained by that [agency]”), .090 (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. 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). As previously mentioned, the requestor is an investigator

with the TEA, which has assumed the duties of the SBEC.² The TEA is conducting an investigation of the named individual, and we understand the named individual either has applied for or currently holds educator credentials. You state the submitted information relates to a pending criminal investigation. Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to the CHRI regarding the named individual.³

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 cannot determine whether the release of the submitted information is consistent with the Family Code. Therefore, if the sheriff’s office determines the release of the CHRI in the submitted information is not consistent with the Family Code, then the sheriff’s office 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) (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). However, if the sheriff’s office determines the release of the CHRI is consistent with the Family Code, then the sheriff’s office must release information from the submitted 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. Although you seek to withhold the CHRI at issue 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. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 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). Therefore, the sheriff’s office may not withhold the CHRI at issue pursuant to section 552.108 of the Government Code. In that event, the sheriff’s office must withhold the remainder of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

²The 79th Texas legislature passed House Bill 1116, which required the transfer of the SBEC’s administrative functions and services to the 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 statutes apply to information held by the Department of Family and Protective Services and not the department. *See* Fam. Code §§ 261.308, .406.

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,


Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 600812

Enc. Submitted documents

c: Requestor
(w/o enclosures)