



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2017

Ms. Susan Camp-Lee
Counsel for the City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2017-16529

Dear Ms Camp-Lee:

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# 667521.

The Round Rock Police Department (the "department"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named individual. You claim some of the submitted information is excepted from disclosure under section 552.101 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." 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). 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 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). Therefore, we find the submitted information was developed in an investigation conducted pursuant to chapter 261 of the Family Code and is generally confidential under section 261.201(a) of the Family Code.

However, section 261.201 of the Family Code also 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). In this instance, section 22.082 of the Education Code constitutes applicable state law. As noted above, the requestor is an investigator with the TEA, which has assumed the duties of the State Board for Educator Certification (the “SBEC”).¹ The requestor claims section 22.082 of the Education Code gives the TEA a right to the requested information and indicates the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials.² Section 22.082 of the Education Code provides the SBEC “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.” Educ. Code § 22.082. You inform our office the case at issue is closed. Thus, as the submitted information consists of a closed criminal investigation of an applicant for or a holder of a certificate issued under subchapter B, Chapter 21 of the Education Code, we find section 22.082 of the Education Code gives the TEA a statutory right of access to the submitted information in its entirety. *See id.*

However, as previously noted, section 261.201(a) states the release must also be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). Consequently, if the department determines release of the submitted information is not consistent with the Family Code, then the department must withhold the submitted information in its entirety

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.

²The 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.

under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines release of the submitted information is consistent with the Family Code, then section 261.201 does not prohibit the release of the submitted information to the requestor in this case. Although you also claim some of the submitted information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy, a specific statutory right of access to information prevails over the common law. *Collins v. Tex Mall, L.P.*, 297 S.W. 3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, the department may not withhold any of the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, in the instance release is consistent with the Family Code, we must consider whether the submitted information is otherwise excepted from disclosure.

The department also seeks to withhold some of the submitted information under section 552.101 of the Government Code in conjunction with section 21.12 of the Penal Code. Section 552.101 also encompasses section 21.12 of the Penal Code. Section 21.12(a) provides a public or private primary or secondary school employee commits an offense if the employee “engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private secondary school at which the employee works[.]” Penal Code § 21.12(a)(1). Further, section 21.12(d) provides “[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under [the Act].” *Id.* § 21.12(d). The submitted information pertains to an investigation of an alleged improper relationship between a public school employee and a student. *See id.* § 21.12(a). However, the requestor is requesting this information in his capacity as a TEA investigator under section 22.082 of the Education Code. Thus, section 21.12(d) of the Penal Code does not apply in this instance. Accordingly, in the instance release is consistent with the Family Code, the department must release the submitted information to the TEA requestor pursuant to section 22.082 of the Education Code.

In summary, if the department determines the release of the submitted information at issue 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. If the department determines the release of the submitted information is consistent with the Family Code, the department must release the

submitted information in its entirety to the TEA requestor pursuant to section 22.082 of the Education Code.³

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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 667521

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the TEA has a right of access to certain information in these documents that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.