



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2017

Ms. Andrea D. Russell
Counsel for the City of Southlake
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2017-16530

Dear Ms. Russell:

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# 667738.

The City of Southlake (the "city"), which you represent, received a request from a representative of the Texas Education Agency (the "TEA") for a specified police report. 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. This section encompasses information made confidential by other statutes, such as section 261.201(a) 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

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). You assert the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for 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”). You do not indicate the city’s police department has adopted any rules that would permit the release of the responsive information. Thus, we assume no such regulation exists. Given that assumption, we conclude section 261.201 of the Family Code is applicable to the submitted information. 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).

As noted above, the requestor is a representative of the TEA, which has assumed the duties of the State Board for Educator Certification (“SBEC”).¹ In this instance, 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, information, 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 (SBEC is entitled to obtain CHRI from DPS about 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

¹The 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.

(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).

The requestor is a TEA investigator. The requestor seeks access to a specific report involving an individual who holds educator credentials. The city informs us the submitted information relates to a pending case. Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to CHRI regarding the subject of the report. Although you also seek to withhold such information 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. 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 city determines release of the CHRI is consistent with the Family Code, the city 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.² In that instance, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the city determines release 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.³ *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).

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.

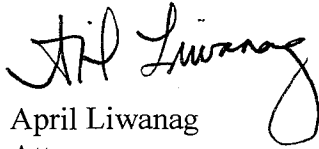
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

²As noted, the requestor has a special right of access, beyond that of the general public, to any information being released in this instance. Therefore, if the city receives another request for this information from a different requestor, it must again seek a ruling from this office.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

[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,

A handwritten signature in black ink, appearing to read "April Liwanag". The signature is fluid and cursive, with a large loop at the end of the last name.

April Liwanag
Attorney
Open Records Division

AML/eb

Ref: ID# 667738

Enc. Submitted documents

c: Requestor
(w/o enclosures)