



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 5, 2019

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1400 South Lamar, 6th Floor. 6W
Dallas, Texas 75215

OR2019-34184

Dear Ms. Silver:

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# 800314 (Ref. No. D023371-080919).

The Dallas Police Department (the "department") received a request for all reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. 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 We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(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 submitted 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. Therefore, the submitted information is generally confidential under section 261.201(a) of the Family Code.

However, section 261.201 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.” Section 22.082 provides the Texas Education Agency (“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).

The requestor is an investigator with the TEA, which has assumed the duties of SBEC.² The requestor states the information at issue is related to a TEA investigation of an individual who has applied for or currently holds educator credentials. Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to CHRI regarding the individual. 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

² The 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.

is unable to determine whether release of the information is consistent with the Family Code. Moreover, the department does not inform us, and the submitted information does not otherwise reflect, whether the criminal investigation to which the information pertains is closed. Accordingly, we must rule in the alternative.

If the department determines the release of the information at issue is not consistent with the Family Code, then it 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 Fam. Code § 261.201 information). If (1) the department determines release of the information is consistent with the Family Code and (2) the criminal investigation to which the information pertains is closed, then the department must release the submitted information in its entirety pursuant to section 22.082 of the Education Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Finally, if (1) the department determines release of the information is consistent with the Family Code and (2) the criminal investigation at issue is not closed, then the department must release the CHRI, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ms. Heather Silver - Page 4

Ref: ID# 800314.

Enc. Submitted documents

c: Requestor
(w/o enclosures)