



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2020

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2020-17370

Dear Mr. Gates:

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# 834234 (ORR# M029902-040620).

The City of Midland (the "city") received a request for information related to a specified incident involving a named individual. You claim 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.

Initially, the city asserts the submitted information is not responsive to the request for information. The Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the city has submitted information for our review and arguments against its disclosure, we find the city has made a good-faith effort to submit information that is responsive to the request. Accordingly, we will address the arguments of the city against disclosure of the submitted responsive 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 the confidentiality provisions found in chapter 55 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides as follows:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides, in part, the following:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has determined records subject to an expunction order are not subject to public disclosure under the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). The city states the submitted information is the subject of an expunction order. However, the city has not submitted a copy of the expunction order at issue. Thus, we must rule conditionally. To the extent any portion of the submitted information is the subject of an expunction order, the city must withhold such information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure.¹ To the extent the submitted information is not the subject of an expunction order, the city may not withhold the information under section 552.101 of the Government Code on that basis. In that event, we will consider whether the submitted information is otherwise excepted under the Act.

Section 552.101 of the Government Code also encompasses information confidential under section 261.201 of the Family Code, which provides, in part, as follows:

(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 In that instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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). Upon review, we find the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or 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. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” 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). Accordingly, the submitted information is generally confidential under section 261.201 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). We note the requestor is an investigator with the TEA, which has assumed the duties of the SBEC.² We understand the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials. 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. We note 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,

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.

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 city determines release of the information at issue is for purposes consistent with the Family Code, then the city must generally release the submitted information in its entirety to the requestor pursuant to section 22.082 of the Education Code. If the city determines release of the information at issue is not for purposes consistent with the Family Code, then the city 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) (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), (i), (k) (listing circumstances under which section 261.201 information can be released).

In summary, to the extent any portion of the submitted information is the subject of an expunction order, the city must withhold such information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. To the extent any portion of the submitted information is not the subject of an expunction order, then the city must withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if the city determines release of the information at issue is not for purposes consistent with the Family Code; however, if the city determines the release of information at issue is consistent with the Family Code, then the city must release the information at issue to this requestor pursuant to section 22.082 of the Education 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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/rm

Mr. Stephen D. Gates - Page 5

Ref: ID# 834234

Enc. Submitted documents

c: Requestor
(w/o enclosures)