



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2020

Mr. Robert Carroll  
Senior Assistant City Attorney  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR2020-22692

Dear Mr. Carroll:

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# 843535 (Ref. No. P003600-062620).

The City of Odessa (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 sections 552.101 and 552.108 of the Government Code. Additionally, the city provides documentation showing it has notified the Ector County District Attorney's Office of the right to submit comments to this office why some of the submitted information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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." *Id.* § 552.101. This section encompasses section 261.201 of the Family Code, which provides, in relevant part:

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<sup>1</sup> As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

(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 state, and we agree, the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under Chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You do not indicate the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential pursuant to section 261.201(a) 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).

In this instance, section 22.082 of the Education Code constitutes “applicable state law.” Section 22.082 provides the Texas Education Agency (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, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2); *see also id.* §§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]”); .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); .0901 (TEA is entitled to obtain CHRI from Texas Department of Public Safety (“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).

We note the requestor is an investigator with the TEA, which has assumed the duties of SBEC.<sup>2</sup> The requestor states the TEA is conducting an investigation of the named individual who either has applied for or currently holds educator credentials. The requestor seeks access to information relating to a specific incident involving the named individual.<sup>3</sup> You inform us the submitted information relates to a pending criminal case. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual. Although you seek to withhold such information under section 552.108 of the Government Code, a specific statutory right of access overcomes the general exceptions to disclosure under 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).

However, as noted above, section 261.201(a) states the release must be for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). This office cannot determine whether release of the information is consistent with the Family Code. Therefore, if the city determines release of the CHRI is consistent with the Family Code, then the city must release CHRI to this requestor and must withhold the remainder of the information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines release is not 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.<sup>4</sup>

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

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<sup>2</sup> The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to TEA, effective September 1, 2005.

<sup>3</sup> The 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 Texas Department of Family and Protective Services and not the department. *See* Fam. Code §§ 261.308, .406.

<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, including the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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/jxd

Ref: ID# 843535

Enc. Submitted documents

c: Requestor  
(w/o enclosures)