



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2022

Mr. M. Matthew Ribitzki
Deputy City Attorney
City of Burleson
141 West Renfro Street
Burleson, Texas 76028

OR2022-07810

Dear Mr. Ribitzki:

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# 936574 (ORR Nos. P004667-122121 and P004669-122121).

The Burleson Police Department (the "department") received two requests from the same requestor for all offense, incident, and investigative reports, witness statements, and confessions regarding two named individuals, including information regarding the investigation and arrest of the named individuals pertaining to a specified incident. You state the department will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, certain information pursuant to Open Records Decision No. 684 (2009), and dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-08169 (2016).¹ You claim some of the requested information is subject to a previous determination by our office. You also claim the

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684. Open Records Letter No. 2016-08169 is a previous determination issued to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the responsive information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-03783 (2022). However, upon review, we find there has been a change in the law, facts, or circumstances on which the previous ruling was based. Consequently, we conclude the department may not rely on Open Records Letter No. 2022-03783 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will consider the submitted arguments against disclosure of the information at issue.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by section 261.201 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert the requested information was used or developed in investigations under chapter 261. *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 section 261.201 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). Upon review, we find the submitted 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 [CHRI] 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 TEA, which has assumed the duties of SBEC.² The requestor asserts the information at issue is related to TEA investigations of individuals who have applied for or currently holds educator credentials. The department informs us the submitted information relates to pending cases. Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to CHRI regarding the individuals. A statutory right of access prevails over the Act’s general exceptions to public disclosure, including section 552.108 of the Government Code. *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 exception to disclosure under the Act). However, 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). Accordingly, if the department determines release of the information is consistent with the Family Code, then the department must release the CHRI pursuant to section 22.082 of the Education Code, 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.³ However, if the department determines the release of the information at

² 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.

³ As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted body worn camera recordings. *See generally* Occ. Code § 1701.661(a), (e). Additionally, in this instance, because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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).

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 936574

Enc. Submitted documents

c: Requestor
(w/o enclosures)