ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2004

Mr. James R. Thompson
City Attorney
City of Copperas Cove
P. O. Drawer 1449
Copperas Cove, Texas 76522

OR2004-7411

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208198.

The Copperas Cove Police Department (the "department") received a request for any information regarding a named individual. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that included among the documents you seek to withhold are two search warrant affidavits. The affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). The submitted information indicates that one of the search warrants has been executed. Therefore, you must release the corresponding search warrant affidavit to the requestor. If the second search warrant has been executed, you must release the remaining search warrant affidavit as well. If this search warrant has not been executed, you must dispose of this affidavit in accordance with the remainder of this ruling.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."[1] This

[1]The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

> (a) The 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:
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> > (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). Because the submitted information relates to an investigation of alleged child abuse, it is generally confidential under section 261.201 of the Family Code. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.*

We note that section 22.082 of the Education Code and chapter 411 of the Government Code constitute "applicable state law" in this instance. Section 22.082 provides that "[t]he State Board for Educator Certification shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to an applicant for or holder of a certificate." Additionally, section 411.090 of the Government Code specifically grants a right of access for the State Board for Educator Certification ("SBEC") to obtain criminal history record information ("CHRI") from the Department of Public Safety ("DPS"). Section 411.090 of the Government Code provides that:

> (a) The State Board for Educator Certification is entitled to obtain from [DPS] any criminal history record information maintained by the department about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.

Gov't Code § 411.090(a). Furthermore, pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." Gov't Code § 411.087(a)(2). 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).

In this instance, the requestor is a staff investigator with SBEC and states that SBEC is conducting an investigation of an individual who has applied for or currently holds educator credentials. The requestor specifically seeks "copies of all offense, incident, and investigative reports" regarding the named individual. We conclude that when read together, section 22.082 of the Education Code and sections 411.087 and 411.090 of the Government Code give SBEC a statutory right of access to a portion of the requested information. *See also* Gov't Code § 411.082(2); *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 latter statute, later use of term is same as previously defined). Consequently, if the department determines that SBEC intends to use the criminal history record information for purposes consistent with the Family Code, the department must release information from the submitted documents to this requestor that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act).[2] In that instance, the department must withhold the remainder of the information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If, however, the department determines that SBEC does not seek this information for purposes consistent with the Family Code, the department must withhold the remaining information in its entirety pursuant to 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* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure), 440 at 2 (1986) (construing predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

In summary, we conclude that the marked search warrant affidavit must be released in accordance with article 18.01(b) of the Code of Criminal Procedure, and if the second search warrant has been executed, the department must release the additional search warrant affidavit we have marked as well. In regard to the remaining submitted information, including the second search warrant affidavit if the second search warrant has not been executed, if the department determines that SBEC intends to use the criminal history record information for purposes consistent with the Family Code, the department must release to

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[2] We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

this requestor information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions and must withhold the remaining submitted information. If the department determines that SBEC does not seek this information for purposes consistent with the Family Code, the department must withhold the remaining submitted information. As our ruling on these issues is dispositive, we need not address your argument.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 208198

Enc: Submitted documents

c: Ms. Tracy Thomas
Staff Investigator
State Board for Educator Certification
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(w/o enclosures)