ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2004

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza - 9th Floor
El Paso, Texas 79901

OR2004-7689

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208958.

The El Paso Police Department (the "department") received a request from John S. Lopez, Investigator for the State Board for Educator Certification (the "board"), for records pertaining to a specified investigation. You claim that 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 reads as follows:

> (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:
>
> > (1) if maintained on paper or microfilm, kept separate from adult files and records;

> (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
>
> (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.
>
> . . . .
>
> (e) Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

Fam. Code § 58.007(c), (e). The requested information involves juvenile conduct that occurred after September 1, 1997. Thus, section 58.007(c) prohibits the public disclosure of this information. The question becomes whether the board is a "juvenile justice agency" or a "criminal justice agency" entitled to inspect the report under section 58.007(e).

Section 58.101(1) of the Family Code states that "criminal justice agency" has the meaning assigned by section 411.082 of the Government Code. Section 411.082(3) of the Government Code states:

> (3) "Criminal justice agency" means:
>
> > (A) a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice; or
> >
> > (B) a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation.

Gov't Code § 441.082(3). Section 58.101(5) of the Family Code states that "juvenile justice agency" means an agency that has custody or control over juvenile offenders. We have no information to allow us to conclude that the board is a criminal justice agency for purposes of section 411.082, or a "juvenile justice agency" as defined in the Family Code. Furthermore, this does not present a situation in which a transfer of confidential information is permitted based on the interagency transfer doctrine. An interagency transfer of confidential information is prohibited where, as here, a confidentiality statute enumerates specific entities to which release of confidential information is authorized and the requesting

agency is not among the statute's enumerated entities. *See* Attorney General Opinion DM-353 at 4 n. 6 (1995); Open Records Decision No. 661 at 3 (1999). Accordingly, the requested information is confidential pursuant to section 58.007(c) of the Family Code, and the department must withhold the requested information under section 552.101.

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,

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 208958

Enc. Submitted documents

c: Mr. John S. Lopez
Staff Investigator
State Board for Educator Certification
1701 North Congress Avenue, 5th Floor
Austin, Texas 78701
(w/o enclosures)