



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 23, 2009

Ms. Eileen McPhee  
Carls, McDonald & Dalrymple, L.L.P.  
901 South Mopac Expressway, Suite 500  
Austin, Texas 78746

OR2009-02336

Dear Ms. McPhee:

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# 335549.

The Georgetown Police Department (the "department") received a request from an investigator with the Texas Education Agency ("the TEA") for information pertaining to a specified incident involving a named educator. 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 261.201(a) of the Family Code, which 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:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). The submitted information was used or developed in an investigation of alleged abuse or neglect of a child. *See* Fam. Code § 261.001 (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Thus, this information 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.* § 261.201(a).

We note that section 22.082 of the Education Code constitutes “applicable state law” in this instance. Section 22.082 of the Education Code provides that 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.” 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.* §§ 411.090 (State Board Educator Certification (“SBEC”) is entitled to obtain CHRI from Department of Public Safety [“DPS”] about a person who has applied to [SBEC] for certificate under Subchapter B, Chapter 21, Education Code), 411.087(a)(2) (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]”); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14<sup>th</sup> 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).

As stated above, the requestor is an investigator with the TEA, which has assumed the duties of SBEC, and states that the TEA is conducting an investigation of an individual who has applied for or currently holds educator credentials.<sup>2</sup> The requestor specifically seeks “copies of all offense, incident, and investigative reports” regarding a charge against the named individual. We understand that the information at issue is not contained in any closed criminal investigation file that relates to a specific applicant for or holder of a certificate under Subchapter B, Chapter 21 of the Education Code. Consequently, if the department determines that release of the CHRI is consistent with the Family Code, the department must release, to this requestor, information from the submitted documents that shows the type of

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

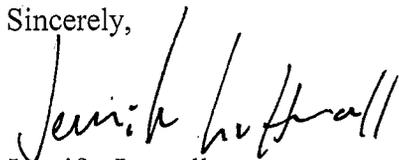
allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.<sup>3</sup> See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). 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 release is not consistent with purposes of the Family Code, the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>4</sup> 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); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

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<sup>3</sup>We note that, because the requestor may have 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.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 335549

Enc. Submitted documents

c: Requestor  
(w/o enclosures)