



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2011

Mr. Ron G. MacFarlane, Jr.
For City of Cedar Hill
The MacFarlane Firm, P.C.
3010 LBJ Freeway, Suite 1200
Dallas, Texas 75234

OR2011-12425

Dear Mr. MacFarlane:

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# 428335.

The Cedar Hill Police Department (the "department"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information related to a specified case involving a named individual. You claim that the submitted 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."¹ Gov't Code § 552.101. Section 552.101 of the Government Code encompasses section 261.201 of the Family Code. Section 261.201 provides as follows:

¹The 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).

(a) Except as provided by Section 261.203, the 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). Upon review, we find the submitted information was used or developed in an investigation of child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Therefore, we find the submitted information was developed in an investigation conducted pursuant to chapter 261 of the Family Code. Accordingly, we conclude the submitted information is generally confidential under section 552.101 in conjunction with section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to section 261.201).

Section 261.201(a) provides, however, that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). In this instance, section 22.082 of the Education Code constitutes “applicable state law.” Section 22.082 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 [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 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 [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).

In this instance, the requestor is an investigator with the TEA, which has assumed the duties of SBEC.² The requestor states the TEA is conducting an investigation of a named individual who either has applied for or currently holds educator credentials. The requestor seeks access to information relating to a specific case involving the named individual.³ You state the submitted information is related to a pending criminal investigation. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual.⁴ Therefore, if the department determines the release of CHRI is consistent with the Family Code, then, the department must release information from the submitted documents that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that event, the department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the release of CHRI is not consistent with the Family Code, then the submitted information must be withheld from the requestor in its entirety under section 552.101 in conjunction with section 261.201.⁵ 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) (listing entities authorized to receive information under section 261.201 of the Family Code).

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, 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

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

³The 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 Department of Family and Protective Services and not the department. See Fam. Code §§ 261.308, .406.

⁴This office has concluded a specific statutory right of access provision prevails over a general exception to disclosure under the Act, such as section 552.108. Open Records Decision No. 454 at 4 (1986).

⁵As we are able to make this determination, we do not address your argument against disclosure.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 428335

Enc. Submitted documents

c: Requestor
(w/o enclosures)