ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2012

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2012-05404

Dear Ms. Champion:

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# 450895.

The Victoria Police Department (the "department") received a request from an investigator for the Texas Education Agency ("TEA") for information related to specified offenses involving a named individual. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 58.007 of the Family Code, which provides in part:

> (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:
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> > (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 Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code title 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of Fam. Code title 3). Although you contend the submitted information is confidential under section 58.007(c), we note the offenders involved were 21 and 17 years of age, respectively, at the time of the offenses to which the submitted information pertains. We therefore conclude the submitted information is not confidential under section 58.007(c) of the Family Code and may not be withheld on that basis under section 552.101 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information pertains to a pending criminal case. Based on your representation, we conclude section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). The department must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. Except for basic information, the department may generally withhold the information at issue under section 552.108(a)(1) of the Government Code.

As previously noted, however, the requestor is an investigator for the TEA, which has assumed the duties of the State Board for Educator Certification (the "SBEC").[1] Therefore, we must determine whether the requestor has a right of access to the information protected by section 552.108(a)(1) of the Government Code. The requestor claims section 22.082 of the Education Code gives the SBEC a right to the information in question. He indicates this information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials.[2] Section 22.082 of the Education Code provides that the SBEC "may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate." Educ. Code § 22.082. In this instance, you inform us the submitted information pertains to a pending criminal case. Therefore, the TEA may not obtain "all records contained" in the open investigation file under section 22.082 of the Education Code. We also must determine, however, whether the TEA may obtain criminal history record information ("CHRI") from the department pursuant to section 22.082. Section 411.090 of the Government Code grants a right of access to the SBEC to obtain CHRI regarding persons who have applied to the SBEC from the Texas Department of Public Safety (the "DPS"). *See* Gov't Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by the DPS on certain school employees or applicants for employment. *See id.* § 411.0901. Moreover, pursuant to section 411.087 of the Government Code, an agency entitled to obtain CHRI from the DPS also is authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]." *Id.* § 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, information, and other formal criminal charges and their dispositions." *Id.* § 411.082(2).

We find that, when read together, section 22.082 of the Education Code and section 411.087 of the Government Code give the TEA a statutory right of access to portions of the submitted information. *See id.*; *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). Accordingly, we conclude the department must release to this requestor information that shows the types of allegations 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

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[1]House Bill 1116, as enacted by the 79th Texas Legislature, required the transfer of the SBEC's administrative functions and services to the TEA effective September 1, 2005.

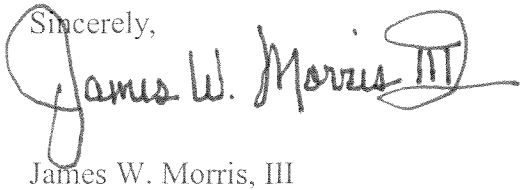
[2]Although the requestor also claims a right of access under sections 261.308 and 261.406 of the Family Code, these statutes apply to information held by the Texas Department of Family and Protective Services and not the city. *See* Fam. Code §§ 261.308, .406.

provisions overcome general exceptions to disclosure under Act).[3] The department may withhold the rest of the submitted information under section 552.108(a)(1) of the Government Code, except for basic information under section 552.108(c), which must be released.[4]

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 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 450895

Enc: Submitted information

c: Requestor
(w/o enclosures)

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[3]Because the TEA has a right of access to submitted information that would otherwise be excepted from disclosure under the Act, the department must seek another decision if it receives another request for this same information from a requestor without such a right of access.

[4]We note basic information includes an arrested person's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.