



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2012

Ms. Leila Feldman  
General Counsel  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugar Land, Texas 77479

OR2012-08997

Dear Ms. Feldman:

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# 457297.

The Fort Bend Independent School District (the "district") received requests from the Texas Department of Education (the "TEA") and a former district employee for employment-related information, including disciplinary records and the personnel file, that pertains to the former employee. You claim 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."<sup>1</sup> This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

[T]he 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
- (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 by the district's police department under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. You do not indicate the district's police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the district must withhold the submitted information from the former district employee under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, as noted in part above, a representative of the TEA also requested the submitted information. Section 261.201(a) provides 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). Section 22.082 of the Education Code constitutes "applicable state law." Section 22.082 provides 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), 411.090 (State Board for Educator Certification (“SBEC”) is entitled to obtain

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<sup>2</sup>As our ruling is dispositive, we do not address your argument to withhold this information.

CHRI from DPS about a person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code), 411.087(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. 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 later statute, later use of term is same as previously defined).

The requestor at issue is an investigator with the TEA, which has assumed the duties of SBEC,<sup>3</sup> and we understand 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. You state the submitted information is related to a pending criminal investigation. Accordingly, the TEA has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual.<sup>4</sup> Therefore, if the district determines the release of CHRI is consistent with the Family Code, then, the district must release to the TEA 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 district must withhold the rest of the submitted information from the TEA under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the district determines the release of CHRI is not consistent with the Family Code, then the district must withhold the submitted information in its entirety from the TEA under section 552.101 in conjunction with section 261.201. *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).

To conclude, the district must withhold the submitted information from both requestors under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, pursuant section 22.082 of the Education Code the district must release to the TEA 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 if the district determines the release of CHRI is consistent with the Family Code.

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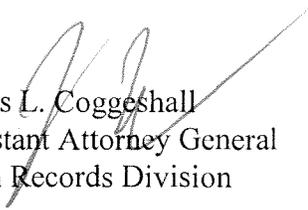
<sup>3</sup>The 79<sup>th</sup> Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

<sup>4</sup>This 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).

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, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 457297

Enc. Submitted documents

c: Requestor  
(w/o enclosures)