ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2012

Mr. Sam Aguirre
Assistant City Attorney
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

OR2012-15523

Dear Mr. Aguirre:

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# 466587.

The San Marcos Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports regarding a named individual, including a specified report. You claim the submitted 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 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." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides as follows:

> (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
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> (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 alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of section 261.201 as "person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes"). Therefore, we find the submitted information is within the scope of section 261.201(a) of the Family Code. You have not indicated the department has adopted rules governing the release of this type of information; therefore, we assume no such regulations exist. Accordingly, we conclude the submitted information is generally confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 261.201(a) provides, however, 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). In this instance, 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), .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.[1] 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.[2] You inform us the submitted information relates to an open and pending case. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual. Although you raise section 552.108 of the Government Code for the information at issue, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Consequently, if the department determines release of the CHRI is consistent with the Family Code, the department must release information from the submitted documents to this requestor 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 instance, the remainder of the submitted information is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. If, however, the department determines release is not consistent with the Family Code, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.[3] *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), (k), (l) (listing entities authorized to receive Fam. Code § 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

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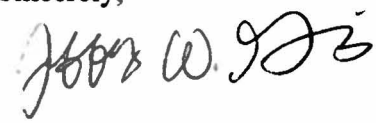
[1]The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to the TEA, effective September 1, 2005.

[2]The 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.

[3]As noted, the requestor has a special right of access, beyond that of the general public, to any information being released in this instance. Therefore, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.

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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/tch

Ref: ID# 466587

Enc. Submitted documents

c: Requestor
(w/o enclosures)