ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2013

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2013-21223

Dear Ms. Thornton:

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# 507972 (CAO File No. 13PIA0484).

The Harris County Sheriff's Office (the "sheriff's office") 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 witness statements and confessions and a specified offense. You claim the submitted information is excepted from disclosure under section 552.101 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." 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 investigations of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes indecency with child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining "child" for purposes of Penal Code section 21.11 as person under 17 years of age). Therefore, we find the submitted information is within the scope of section 261.201(a) of the Family Code. You have not indicated the sheriff's office 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." Fam. Code § 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 specific cases involving the named individual.[2] You inform us the submitted information relates to investigations of reported child abuse made to the sheriff's office. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual. Although you also seek to withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy, a specific statutory right of access overcomes the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.–Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle). Consequently, if the sheriff's office determines release of the CHRI is consistent with the Family Code, the sheriff's office 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 sheriff's office 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.

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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 sheriff's office. *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 sheriff's office receives another request for this information from a different requestor, it must again seek a ruling from this office.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 507972

Enc. Submitted documents

c: Requestor
(w/o enclosures)