



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 6, 2017

Ms. Stacie S. White  
Counsel for Town of Flower Mound  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2017-22901

Dear Ms. White:

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# 678891.

The Town of Flower Mound (the "town"), which you represent, received a request from a representative of the Texas Education Agency (the "TEA") for information pertaining to a specified charge against a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(a) [T]he 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). You assert the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in a town police department investigation under section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as “a 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”). You do not indicate the town’s police department has adopted any rules that would permit the release of this type of information. Thus, we assume no such regulation exists. Given that assumption, we conclude section 261.201 of the Family Code is applicable to the submitted information. However, 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.” *Id.* § 261.201(a).

As noted above, the requestor is a representative of the TEA, which has assumed the duties of the State Board for Educator Certification (“SBEC”).<sup>1</sup> 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, information, 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 (SBEC is entitled to obtain CHRI from DPS about 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).

The requestor is a TEA investigator. The requestor seeks access to a specific report involving an individual who either has applied for or currently holds educator credentials.

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<sup>1</sup>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.

Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to CHRI regarding the subject of the report. However, we are unable to determine whether the information at issue is related to a closed or pending criminal investigation. Thus, we must rule conditionally. If the information at issue pertains to a pending criminal investigation, the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual. *See* Educ. Code § 22.082. However, if the information at issue pertains to a closed investigation, the requestor has a right of access under section 22.082 of the Education Code to the entirety of the submitted information. *See id.*

Nevertheless, as noted above, section 261.201(a) states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office is unable to determine whether release of the information is consistent with the Family Code. Thus, if the town determines the release of the information at issue is not consistent with the Family Code, then the submitted information must be withheld from the requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *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), (k) (listing entities authorized to receive Fam. Code § 261.201 information). If the town determines that release of the information is consistent with the Family Code, then, to the extent the information at issue relates to a pending criminal investigation, the CHRI from the information at issue must be released to the requestor pursuant to section 22.082 of the Education Code. In that instance, the town must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the town determines release of the information at issue is consistent with the Family Code, then, to the extent the information at issue relates to a closed criminal investigation, the submitted information must generally be released to the requestor in its entirety pursuant to section 22.082 of the Education Code. In this instance, although you also seek to withhold portions of the information under section 552.101 of the Government Code in conjunction with common-law privacy, we note a specific statutory right of access overcomes common-law and general exceptions to disclosure in the Act. *See CenterPoint Energy Houston Elec. LLC v. Harris County Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no conflicting or controlling statutory law); Attorney General Opinion DM-146 at 3 (1992); 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). However, we note some of the information at issue is subject to section 552.130 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is

excepted from public release. *See* Gov't Code § 552.130. Upon review, we find the motor vehicle record information in the submitted information is confidential under section 552.130 of the Government Code.

Because the information at issue includes confidential information under section 552.130 of the Government Code, we must consider whether the requestor in this case, as a TEA investigator, may nevertheless obtain the information at issue. Because section 22.082 of the Education Code authorizes the requestor to obtain information in its entirety, while section 552.130 of the Government Code excepts from disclosure portions of the submitted information, we find section 22.082 is in conflict with section 552.130 of the Government Code. Where information falls within both a general and specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 22.082 of the Education Code generally allows a TEA investigator access to files of a closed criminal investigation, section 552.130 of the Government Code specifically protects motor vehicle record information. Section 552.130 specifically permits release to certain parties and in circumstances that do not include the TEA representative's request in this instance. Therefore, we conclude, notwithstanding section 22.082, the town must withhold the motor vehicle record information under section 552.130 of the Government Code.

In summary, if the town determines the release of the submitted information is not consistent with the Family Code, then the submitted information must be withheld from the requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the town determines the release of the information at issue is consistent with the Family Code, then, to the extent the information at issue relates to a pending criminal investigation, the CHRI from the information at issue must be released to the requestor pursuant to section 22.082 of the Education Code. In that instance, the town must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the town determines the release of the information at issue is consistent with the Family Code, then, to the extent the information at issue relates to a closed criminal investigation, the information at issue must be released to the requestor in its entirety pursuant to section 22.082 of the Education Code; however, when releasing the information at issue, the town must withhold the motor vehicle record information under section 552.130 of the Government Code.<sup>2</sup>

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<sup>2</sup>We note the requestor has a special right of access to some of the information being released. Accordingly, if the town receives another request for this same information from a different requestor, the town must again seek a ruling from this office.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,

A handwritten signature in black ink, appearing to read "Ramsey Abarca", with a long horizontal flourish extending to the right.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/gw

Ref: ID# 678891

Enc. Submitted documents

c: Requestor  
(w/o enclosures)