



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 22, 2019

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

OR2019-10605

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# 760583.

The Flower Mound Police Department (the "department"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports pertaining to a specified case involving a named individual. You state the department will redact certain information pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim some of 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. Section 552.101 encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests,

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<sup>1</sup>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. *Id.* § 552.147(b).

detentions, indictments, information, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See Gov’t Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the some of information at issue consists of CHRI that is confidential under section 411.083 that must generally be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the department must generally withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

However, 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>2</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

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<sup>2</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.

(“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]”). We find, when read together, sections 22.082 of the Education Code and 411.087 of the Government Code give the TEA a statutory right of access to the CHRI at issue. *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 TEA is conducting an investigation of the named individual, and we understand the named individual either has applied for or currently holds educator credentials. Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to information 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.* Although you seek to withhold portions of this information under section 552.101 of the Government Code in conjunction with common-law privacy, we note a statutory right of access generally prevails over the common law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, we conclude the department must generally release CHRI information to this requestor if the criminal investigation is pending, and must generally release the entirety of the submitted information if the criminal investigation is closed. However, we note some of the submitted information 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 department must withhold the motor vehicle record information under section 552.130 of the Government Code.

In summary, 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 department must withhold information subject to section 552.130 of the Government Code and must release the remaining information. 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 department must withhold the motor vehicle record information under section 552.130 of the Government Code.

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,



Lecelle Clarke  
Attorney  
Open Records Division

LC/eb

Ref: ID# 760583

Enc. Submitted documents

c: Requestor  
(w/o enclosures)