



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2020

Mr. J. David Tucker
Assistant District Attorney
Hood County District Attorney's Office
1200 West Pearl Street
Granbury, Texas 76048

OR2020-07705

Dear Mr. Tucker:

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# 816415.

The Hood County District Attorney's Office (the "district attorney's office") received a request for all reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.130, 552.137, and 552.147 of the Government Code.¹ You also state you notified an interested party of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, section 552.301(e)(1)(D) states a governmental body asking for an attorney general decision must, within fifteen business days of receiving a request, provide the attorney general with "a copy of the specific information requested, *or submit representative samples of information if a voluminous amount of information was requested[.]*" *Id.* § 552.301(e)(1)(D) (emphasis added). We note you have submitted a voluminous amount of information rather than a representative sample. The information submitted includes seven compact discs consisting of several thousand files and several

¹ Although you also raise section 552.117 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

hours of audio and video recordings. We have identified and reviewed a representative sample of the voluminous information submitted.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information confidential under section 261.201 of the Family Code, which provides, in part, as follows:

(a) [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 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, the submitted information is generally confidential under section 261.201 of the Family Code.

However, section 261.201 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). Section 22.082 of the Education Code constitutes “applicable state law.” Section 22.082 provides the Texas Education Agency (“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

² To the extent the district attorney’s office identifies confidential information subject to a provision not addressed in this ruling, the city should contact the Open Government Hotline.

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).

However, section 261.201 of the Family Code also 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). As noted above, the requestor is an investigator with the TEA, which has assumed the duties of the SBEC.³ We understand the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials. Section 22.082 of the Education Code provides the SBEC “may obtain from any law enforcement or criminal justice agency all criminal history record information 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.” Educ. Code § 22.082. We note the case at issue is closed. Thus, as the submitted information consists of a closed criminal investigation of an applicant for or a holder of a certificate issued under subchapter B, Chapter 21 of the Education Code, we find section 22.082 of the Education Code gives the TEA a statutory right of access to the submitted information in its entirety. *See id.* However, as previously noted, section 261.201(a) states the release must also be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). Consequently, if the district attorney’s office determines release of the information at issue is for purposes consistent with the Family Code, then the district attorney’s office must generally release the submitted information in its entirety to the requestor pursuant to section 22.082 of the Education Code. If the district attorney’s office determines release of the information at issue is not for purposes consistent with the Family Code, then the district attorney’s office must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (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), (i), (k) (listing circumstances under which section 261.201 information can be released).

You seek to withhold some of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy and the common-law informer’s privilege, and under sections 552.107, 552.137, and 552.147 of the Government Code. We note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *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). Further, statutory access provisions generally prevail over 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 it directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v.*

³ 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.

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). Therefore, the district attorney's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy or the informer's privilege, or under section 552.107, section 552.137, or section 552.147 of the Government Code.

However, we note some of the information at issue is excepted from disclosure under section 552.130 of the Government Code. Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The submitted information contains motor vehicle record information, which we marked, that is confidential under section 552.130 of the Government Code.

Because section 22.082 of the Education Code authorizes the requestor to obtain the submitted information in its entirety, while section 552.130 of the Government Code excepts from disclosure portions of this information, section 22.082 conflicts with section 552.130. Where statutes are in irreconcilable conflict, the specific provision prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See id.* § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163,168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Section 552.130 of the Government Code specifically protects motor vehicle record information and contains its own access provisions. Therefore, we find section 552.130 is not a general exception under the Act. Furthermore, because section 552.130 specifically protects motor vehicle record information, while section 22.082 provides TEA with a general right of access, we find the confidentiality provision found in section 552.130 is more specific than the general right of access provided to TEA by section 22.082. Accordingly, notwithstanding section 22.082, we conclude the district attorney's office must withhold the information we marked under section 552.130 of the Government Code.

In summary, if the district attorney's office determines release of the information at issue is not for purposes consistent with the Family Code, then the district attorney's office must withhold the submitted information in its entirety under section 552.101 of the Government

Code in conjunction with section 261.201(a) of the Family Code. If the district attorney's office determines release of the information at issue is for purposes consistent with the Family Code, the district attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code and release the remaining information to the requestor pursuant to section 22.082 of the Education 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/mo

Ref: ID# 816415

Enc. Submitted documents

c: Requestor
(w/o enclosures)