



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2020

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-15779

Dear Mr. Murray:

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# 832305 (PIR No. W099859).

The City of Fort Worth (the "city") received a request for all reports pertaining to a named individual, including a specified incident. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common law privacy, both prongs of this test must be satisfied. *Id.* at 681 82. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individual. However, the requestor also asks for information pertaining to a specific incident. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. We note you have only submitted information pertaining to the specified incident. Therefore, this information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that ground. Accordingly, we will address your argument to withhold this information.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 261.201 of the Family Code 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 information pertaining to the specified incident relates to an investigation of alleged or suspected child abuse or neglect under chapter 261. *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 this section 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the city's police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is confidential pursuant to section 261.201(a) of the Family Code and must generally be withheld under section 552.101 of the Government Code on that basis. *See id.* § 261.201(a).

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 (the “TEA”) “may obtain from any law enforcement or criminal justice agency all [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 (SBEC is entitled to obtain CHRI from DPS about a person who has applied to State Board for Educator Certification (“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).

We note the requestor is an investigator with the TEA, which has assumed the duties of SBEC.¹ The requestor asserts the information at issue is related to a TEA investigation of an individual who 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 CHRI regarding the individual or all records contained in a closed criminal investigation file relating to the individual. However, 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 at issue is consistent with the Family Code. Moreover, the city does not inform us, and the information at issue does not otherwise reflect, whether the criminal investigation to which the information pertains is closed. Accordingly, we must rule in the alternative.

If the city determines the release of the information at issue is not consistent with the Family Code, then it must withhold the 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) (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 city determines release of the information at issue is consistent with the Family Code and the criminal investigation to which the information pertains is closed, then the city must generally release the submitted information in its entirety pursuant to section 22.082 of the Education Code. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Finally, if the city determines release of the information at issue is consistent with the Family Code and the criminal investigation at issue is not closed, then the city must release the CHRI from the information at issue, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In the event the city determines release of the information at issue is consistent with the Family Code and the criminal investigation to which the information pertains is closed, we must nevertheless consider whether the information at issue under section 261.201 is otherwise excepted from disclosure.

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

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).² 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 city must withhold the information we marked under section 552.130 of the Government Code.

In summary, if the city determines release of the submitted information is consistent with the Family Code and the criminal investigation to which the information pertains is closed, then the city must generally release the submitted information in its entirety pursuant to section 22.082 of the Education Code. If the city determines release of the submitted information is consistent with the Family Code and the criminal investigation at issue is not closed, then the city must release the CHRI from the information at issue, but must withhold

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines release of the information at issue is consistent with the Family Code and the criminal investigation to which the information pertains is closed: the city must withhold the motor vehicle record information under section 552.130 of the Government Code and the city must release the remaining information.³

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/rm

Ref: ID# 832305

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the remaining information contains social security numbers. 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 under the Act. *See* Gov't Code § 552.147(b).