



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 6, 2020

Mr. Christopher K. Austria
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-28018

Dear Mr. Austria:

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# 853423 (FW PIR No. W104697).

The City of Fort Worth (the "city") received a request for a specified incident report involving a named individual. 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. This section 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, you state, and you agree, the information at issue pertains 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

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.

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. The city states the investigation at issue is closed. Thus, as the submitted information consists of a closed criminal investigation of an application 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* Educ. Code § 22.082. 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). 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, 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). In this event, we must consider whether the information at issue under section 261.201 is otherwise excepted from disclosure.

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 a driver's license state and number 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 driver's license state and number under section 552.130 of the Government Code.

In summary, 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. If the city determines release of the submitted information is consistent with the Family Code, then the city must generally release the submitted information in its entirety pursuant to section 22.082 of the Education Code; however, the city must withhold the driver's license state and number under section 552.130 of the Government Code.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

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).

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).

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,

Thana Hussaini
Assistant Attorney General
Open Records Division

TSH/gw

Ref: ID# 853423

Enc. Submitted documents

c: Requestor
(w/o enclosures)