



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 6, 2022

Ms. Shawnta A. Adams  
Assistant City Attorney  
Arlington Police Department  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2022-10123

Dear Ms. Adams:

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# 940672 (Ref. No. R128897).

The Arlington Police Department (the "department") received a request for information pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments 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 protected by other statutes, such as section 58.008 of the Family Code, which provides, in relevant part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.008(b) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.008(b). Upon review, we find the submitted information does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find that you have failed to demonstrate the applicability of section 58.008 to the submitted information, and it may not be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses section 261.201 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.

*Id.* § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). You do not indicate the 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 generally confidential pursuant to section 261.201(a) of the Family Code. 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).

We note the requestor is an investigator with the Texas Education Agency (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 that 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.

The requestor states the information at issue is related to a TEA investigation of an individual who has applied for or currently holds educator credentials. We understand the information at issue pertains to a closed investigation; therefore, the requestor has a statutory right of access to the entirety of information at issue pursuant to section 22.082. Although you also seek to withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy, 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).

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 cannot determine whether release of the information is consistent with the Family Code. Therefore, if the department determines the release of the submitted information is not consistent with the Family Code, then the department 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); *see also* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive Fam. Code § 261.201 information). However, if release of the information is consistent with the Family Code, then the requestor generally has a right of access to the submitted information pursuant to section 22.082 of the Education 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.<sup>2</sup> *See* Gov't Code § 552.130. The department must generally withhold the driver's license numbers and states of issuance within the submitted

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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.

<sup>2</sup> 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).

information under section 552.130 of the Government Code. Because section 552.130 has its own access provisions, it is not a general exception under the Act. Thus, we must address the conflict between the right of access provided under section 22.082 of the Education Code and the confidentiality provided by 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); Open Records Decision No. 451 (1986). 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. Thus, we find the confidentiality provided by section 552.130 is more specific than, and prevails over, the general right of access provided by section 22.082. Accordingly, the department must withhold the driver’s license numbers and states of issuance within the submitted information under section 552.130 of the Government Code but must release the remaining information pursuant to section 22.082 of the Education Code.

In summary, if the department determines the release of the submitted information is not consistent with the Family Code, then the department 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 department determines the release of the information is consistent with the Family Code, then the department must withhold the driver’s license numbers and states of issuance within the submitted information under section 552.130 of the Government Code and must release the remaining information to this 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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/be

Ref: ID# 940672

Enc. Submitted documents

c: Requestor  
(w/o enclosures)