



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2022-29744

Dear Mr. Kopp:

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# 974271 (ORR# W457926-070722).

The San Antonio Police Department (the "department") received a request for information related to a specified case involving a named individual. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information includes a police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661 provides, in relevant part, the following:

(a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

(1) the date and approximate time of the recording;

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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.

Fam. Code § 261.201(a). The remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *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). Accordingly, we find this information is subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 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 is with TEA, which has assumed the duties of SBEC.² The department informs us the information at issue pertains to a closed investigation. The information at issue may be 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 to the information at issue under section 22.082 of the Education Code. If the information at issue is not related to a TEA investigation of an individual who has applied for or currently holds educator credentials, or if the release of the information is not consistent with the Family Code, then the department must withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ *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 the information at issue is related to a TEA investigation of an individual who has applied for or currently holds educator credentials and release of the information is consistent with the Family Code, then the requestor has a right of access to the information at issue pursuant to section 22.082 of the Education Code. A statutory right of access prevails over the Act’s general exceptions to public disclosure, including section 552.108 of the Government Code. *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 exception to disclosure under the Act). Thus, if the requestor has access to the information pursuant to section 22.082 of the Education Code, then the department may not withhold any of the information under section 552.108 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

² 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.

³ In that event, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

excepted from public release.⁴ See Gov't Code § 552.130. The department must generally withhold the driver's license numbers and states of issuance within the information at issue 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 the general right of access provided by section 22.082. Accordingly, the department must withhold driver's license numbers and states of issuance under section 552.130 of the Government Code, but release the remaining pursuant to section 22.082 of the Education Code.

In summary, the submitted body worn camera recording was not properly requested pursuant to chapter 1701 of the Occupations Code and it need not be released. If the remaining information is not related to a TEA investigation of an individual who has applied for or currently holds educator credentials or the release of the information is not consistent with the Family Code, then the department must withhold the remaining 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 remaining information is related to a TEA investigation of an individual who has applied for or currently holds educator credentials and release of the information is consistent with the Family Code, then the department must withhold driver's license numbers and states of issuance under section 552.130 of the Government Code and must release the remaining information at issue 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

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/pt

Ref: ID# 974271

Enc. Submitted documents

c: Requestor
(w/o enclosures)