



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2022

Mr. Nico Arias
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-33940

Dear Mr. Arias:

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# 981604 (PIR No. R004378-080922).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. You state the department will release some information to the requestor. 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides:

[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 submitted 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). Thus, we find this information is subject to 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 department must generally withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) 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.” Fam. Code § 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 (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 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).

The requestor is an investigator with TEA, which has assumed the duties of the State Board for Educator Certification (“SBEC”).¹ The requestor seeks access to information pertaining to a specified incident involving an individual who either has applied for or currently holds educator credentials. Accordingly, the requestor may have a right of access the information

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.

at issue pursuant to section 22.082 of the Education Code.² *See* Educ. Code § 22.082. However, in this instance, we are unable to determine whether the information at issue is related to a closed criminal investigation or whether release would be for purposes consistent with the Family Code. Thus, we must rule conditionally. If the department determines release of the information at issue 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 information at issue does not pertain to a closed criminal investigation and release of the information is consistent with the Family Code, then the department must release the CHRI to the requestor pursuant to section 22.082 of the Education Code and withhold the remainder of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the information at issue pertains to a closed criminal investigation and release of the information is consistent with the Family Code, then department must generally release the submitted information to this requestor pursuant to section 22.082 of the Education Code; in this instance, we consider the applicability of section 552.130 of the Government Code to the information at issue.³

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Upon review, we note the information at issue contains motor vehicle record information, which must generally be withheld 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. *See generally* 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, we must address the conflict between the right of access provided pursuant to 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); ORD 451. 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.

² We note the requestor also asserts a right of access to the information at issue pursuant to sections 261.308 and 261.406 of the Family Code. However, these statutes apply to information held by the Texas Department of Family and Protective Services and not the department. *See* Fam. Code §§ 261.308, .406.

³ 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).

Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the department determines release of the information at issue 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 information at issue does not pertain to a closed criminal investigation and release of the information is consistent with the Family Code, then the department must release the CHRI to the requestor pursuant to section 22.082 of the Education Code and withhold the remainder of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the information at issue pertains to a closed criminal investigation and release of the information is consistent with the Family Code, then the department must generally release the submitted information to this requestor pursuant to section 22.082 of the Education Code; in this instance, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

Ref: ID# 981064

Enc. Submitted documents

c: Requestor
(w/o enclosures)