



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2006

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
Box 4087
Austin, Texas 78773-0001

OR2006-01437

Dear Ms. Smith:

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# 242247.

The Texas Department of Public Safety (the "department") received a request from an investigator for the Texas State Board for Educator Certification ("SBEC") for records pertaining to a specified case. You claim that the requested 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 reads as follows:

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

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

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from 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 Subchapter B.

....

(e) Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

Fam. Code § 58.007(c), (e). The requested information involves juvenile conduct that occurred after September 1, 1997.¹ Thus, the submitted information is confidential under section 58.007(c) of the Family Code.

The requestor asserts a right of access to portions of the requested information pursuant to section 22.082 of the Education Code, which provides that SBEC “shall obtain from any law enforcement or criminal justice agency all criminal history record information [“CHRI”] that relates to an applicant for or holder of a certificate.”² 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).

Generally, juvenile law enforcement records of conduct that occurred on or after September 1, 1997, must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Thus, the instant situation presents a conflict between section 58.007 and section 22.082 of the Education Code. However, where information falls within both a general and a specific statutory provision, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See* Gov’t Code § 311.026; *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 Nos. 583 (1990), 451 (1986). In this instance, we believe section 22.082 of the Government Code grants SBEC access to

¹We note that section 58.007(c)(1) requires law enforcement agencies to keep records and files concerning a child separate from adult records and files. Fam. Code § 58.007(c)(1); *see* DM-435 at 2-3 (1997); Open Records Decision No. 680 at 2 (2003).

²We note that section 411.090 of the Government Code contains a similar access provision.

portions of the information because we consider section 22.082 to be more specific than the general confidentiality provision of section 58.007(c) of the Family Code. Under both sections 22.082 of the Education Code and 411.090 of the Government Code, the legislature intended that SBEC have access to “all [CHRI] that relates to an applicant for or holder of a certificate.” We do not believe that the legislature intended a confidentiality statute with broad applicability to members of the public regarding records of child offenders to limit that access. *See* Gov’t Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevail). We therefore conclude that the CHRI relating to an applicant for or holder of a certificate must be released to the requestor under section 22.082 of the Education Code. The rest of the submitted information is confidential under section 58.007 of the Family Code and must be withheld from the requestor under section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/er

Ref: ID# 242247

Enc. Submitted documents

c: Mr. Juan Flores
Texas Education Agency
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(w/o enclosures)