



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2008

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
600 North Bell Blvd
Cedar Park, Texas 78613

OR2008-14823

Dear Ms. Quinn:

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# 326438.

The City of Cedar Park Police Department (the "department") received a request for the investigation of a certain case. You state that the department will release basic information about the case to the requestor. You claim that portions of the requested information are 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). You bring your section 552.101 claim, in part, in conjunction with *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 764 (1989), in which the Court addressed the privacy of a compilation of a private citizen's criminal history. When a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (recognizing distinction between public records found in courthouse files and local police stations and compiled summary of information; noting individual has significant

privacy interest in compilation of one's criminal history). Here, however, the requestor seeks a specified investigation rather than unspecified information about a named individual. Consequently, the request here does not implicate the individual's right to privacy. Thus, the information at issue is not a private compilation and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses information made confidential by statute. You ask whether the identity of a juvenile suspect is protected from disclosure under 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. Section 58.007(c) reads in pertinent part 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.

Fam. Code § 58.007(c). Section 58.007(c) does not apply where the information in question involves a juvenile victim, complainant or witness and not a juvenile suspect or offender. *See id.* § 51.04(a) (Family Code title 3 covers cases involving delinquent conduct or conduct indicating need for supervision engaged in by child); *see also id.* § 51.02(2) (defining "child") as person ten years of age or older and under seventeen years of age). The information at issue does not list a juvenile as a suspect or offender or otherwise involve delinquent conduct or conduct indicating a need for supervision. Thus, the information is not confidential under section 58.007, and may not be withheld under section 552.101 on this basis.

Section 552.101 also encompasses section 261.201(a) of the Family Code. Section 261.201(a) provides as follows:

(a) The 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, 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 requested information relates to an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining child abuse). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, and upon review, we find that the information is within the scope of section 261.201 of the Family Code. Therefore, the documents at issue are generally confidential under section 261.201 of the Family Code. Section 261.201(a) provides, however, that 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 believe section 22.082 of the Education Code constitutes “applicable state law” in this instance. Section 22.082 of the Education Code provides that 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.” Educ. Code § 22.082. The requestor, an investigator at the TEA, claims section 22.082 gives the State Board for Educator Certification (the “SBEC”) a right to the requested information and indicates that the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials.¹ TEA assumed the duties of the SBEC.² You state that the case is closed. Thus, as the information at issue consists of a closed criminal investigation that relates to a specific applicant for or holder of a certificate under subchapter B, chapter 21 of the Education Code, section 22.082 authorizes the requestor to obtain the information in its entirety.

However, section 261.201(a) states that the 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. Consequently, if department determines that release of the information is consistent with the Family Code, section 261.201 does not prohibit the release of the information to the requestor in this case. *See* Fam. Code § 261.201(a), Open Records Decision No. 451 (1986) (specific statutory right

¹The requestor also claims a right to the information at issue under sections 261.308 and 261.406 of the Family Code. These statutes, however, apply to the Department of Family and Protective Services and not the department. *See* Fam. Code §§ 261.308, .406.

²The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to TEA, effective September 1, 2005.

of access provisions overcome general exceptions to disclosure under statutory predecessor to Act).

If, however, the department determines that release is not consistent with purposes of the Family Code, the department must withhold the information in its entirety pursuant to 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); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information).

However, we must nevertheless consider whether the information is otherwise excepted from disclosure in the event that the department determines that release of the information is consistent with the Family Code. The report includes private information. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Industrial Foundation*, 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

In addition, the information includes Texas driver's license numbers. Section 552.130 of the Act excepts from required public disclosure, among other information, a Texas driver's license number. *See* Gov't Code § 552.130.

Since the information at issue includes private information and confidential driver's license numbers, the question becomes whether the requestor in this case, as a TEA investigator, may nevertheless obtain the records at issue, including the private information and the driver's license numbers. Because section 22.082 authorizes the requestor to obtain the information in its entirety while sections 552.101 and 552.130 except from disclosure portions of the information, section 22.082 conflicts with sections 552.101 and 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 that the legislature intended the general provision to prevail. *See* Gov't Code 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 552.101 is a general exception to disclosure under the Act. As a general rule, the Act's general exceptions to required public disclosure are not applicable to information that a statute other than the Act expressly makes public. *See* Open Records Decision No. 623 at 3 (1994). We therefore hold that the right of access afforded to TEA investigators under section 22.082 prevails over section 552.101.

However, section 552.130 specifically protects Texas motor vehicle record information and permits release to certain parties in certain circumstances that do not include TEA's request in this instance. *See* Open Records Decision No. 629 (1994) (providing non-disclosure provision in Bingo Enabling Act prevailed over provision that generally provided for public access to applications, returns reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission). Accordingly, we conclude that the department must withhold the Texas driver's license numbers under section 552.130.

In summary, if the department determines that release of the information to the requestor in this case is consistent with the Family Code, the department must withhold the Texas driver's license numbers under section 552.130 and release the remaining information at issue to the requestor.³ If the department determines that the release of the information to the requestor in this case is not consistent with the Family Code, the department must withhold the information in its entirety under section 552.101 in conjunction with section 261.201 of the Family 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

³We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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 challenge 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/jh .

Ref: ID# 326438

Enc: Submitted documents

c: Mr. Thomas Rivera
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(w/o enclosures)