



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2009

Ms. Dahlia S. Rico
Records Clerk
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2009-15979

Dear Ms. Rico:

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# 361040 (EPD Reference No. 4102).

The Edinburg Police Department (the "department") received a request from an investigator for the Texas Education Agency ("TEA") for information relating to a specified case number. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

(a) [T]he 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, 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); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We find that the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code; so as to fall within the scope of section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). Section 261.201 also provides, however, that 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).

In this instance, section 22.082 of the Education Code constitutes “applicable state law.” Section 22.082 provides that 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.* §§ 411.090 (State Board for Educator Certification [“SBEC”] is entitled to obtain CHRI from Texas Department of Public Safety [“DPS”] about a person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code), 411.087(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).

In this instance, the requestor is an investigator for TEA, which has assumed the duties of the SBEC.¹ The request states that TEA is conducting an investigation of an individual who either has applied for or currently holds educator credentials. The requestor seeks access to information relating to a specified case that involves the named individual. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to CHRI

¹The Seventy-ninth Texas Legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

regarding the named individual or all records contained in a closed criminal investigation file involving the individual. You indicate that the submitted information is related to a pending case. Therefore, if the department determines that the release of CHRI is consistent with the Family Code, then the department must release information from the submitted documents that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *Id.* In that event, the department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines that the release of CHRI is not consistent with the Family Code, then the submitted information must be withheld from the requestor in its entirety under section 552.101 in conjunction with section 261.201. *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 Fam. Code § 261.201 information).

We next note that the department also raises section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Accordingly, we will consider your claim under section 58.007 for any CHRI that is otherwise subject to release under section 22.082 of the Education Code. Section 58.007 provides in part:

(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 Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). 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 Fam. Code tit. 3). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender.

In this instance, the submitted information involves a juvenile offense that occurred after September 1, 1997. Generally, such information is confidential in its entirety under section 58.007(c). Thus, this situation presents a conflict between section 58.007(c) and section 22.082 of the Education Code. When 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). We consider section 22.082 of the Education Code to be more specific than the general confidentiality provision of section 58.007(c) of the Family Code. Under section 22.082, the legislature intended for TEA to have access to “all [CHRI] . . . that relate[s] to an applicant for or holder of a certificate[.]” Educ. Code § 22.082. We do not believe that the legislature intended for TEA’s access to be limited by section 58.007(c), which is a confidentiality statute with broad applicability to members of the public regarding records of juvenile offenders. Therefore, any CHRI to which the requestor is otherwise entitled under section 22.082 of the Education Code may not be withheld under section 552.101 of the Government Code on the basis of section 58.007(c) of the Family Code.

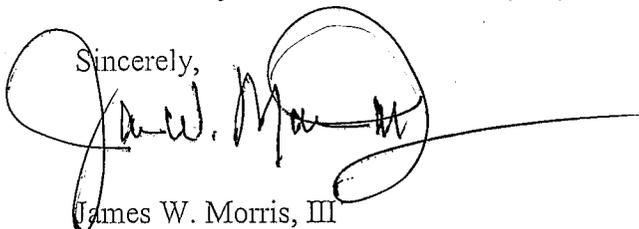
In summary, CHRI must be released to this requestor pursuant to section 22.082 of the Education Code if the department determines that release is consistent with the Family Code. In that event, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines that the release of CHRI is not consistent with the Family Code, then the submitted information must be withheld in its entirety under section 552.101 in conjunction with section 261.201.²

²As we are able to make these determinations, we do not address your claim under section 552.108 of the Government Code, other than to note that exceptions to disclosure under the Act are generally not applicable to information that is subject to a statutory right of access. *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 exceptions to disclosure under the Act). Because the requestor may have a right of access to some of the submitted information, the department should request another ruling if it receives a request from another requestor for this same information. *See* Gov’t Code §§ 552.301(a), .302.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 361040

Enc: Submitted documents

c: Requestor
(w/o enclosures)