



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2011

Mr. Gregory Alicie  
Open Records Specialist  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR2011-12531

Dear Mr. Alicie:

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# 428340.

The Baytown Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for a specified case number. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions 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." This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or 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. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy: some kinds of medical

information or information indicating disabilities or specific illnesses. *E.g.*, Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We agree the information you have marked under section 552.101 is highly intimate or embarrassing and is not of legitimate concern to the public; therefore, we agree this information is subject to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We agree section 552.130 is applicable to the motor vehicle record information you have marked in the submitted information.

You assert some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136(b) provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). We agree section 552.136 is applicable to the insurance policy number you have marked.

You also assert some of the remaining information is excepted under section 552.147 of the Government Code, which provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). We agree section 552.147 is applicable to the social security numbers you have marked in the submitted information.

However, we must consider the requestor's possible right of access to the submitted information. Section 22.082 of the Education Code provides that the 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.* §§ 411.087(a)(2) (agency that is entitled to obtain CHRI from the DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”), .090 (SBEC is entitled to obtain CHRI from Department of Public Safety about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code); *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 latter statute, later use of term is same as previously defined).

As noted above, the requestor is an investigator for the TEA, which has assumed the duties of the SBEC.<sup>1</sup> The requestor states the TEA is conducting an investigation of the named individual, who either has applied for or currently holds educator credentials. Subchapter C of chapter 22 of the Education Code and section 22.082 concern access to “criminal history records” of school district personnel. *See* Educ. Code §§ 22.081-.087. Accordingly, the TEA has a right of access under section 22.082 to the CHRI of the named individual and all records contained in a closed criminal investigation file that involve the named individual as a suspect or arrestee. *Id.* § 22.082.

Although section 22.082 authorizes the TEA to obtain CHRI, we note none of the information you seek to withhold under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code consists of CHRI pertaining to the named educator as defined by section 411.082(2) of the Government Code. *See id.*; Gov’t Code § 411.082(2). You do not indicate whether the submitted incident report pertains to a closed investigation; therefore, we must rule conditionally. To the extent the submitted information is a closed criminal investigation file, then the requestor has a statutory right of access to it pursuant to section 22.082. If, however, section 22.082 authorizes the requestor to obtain the submitted information in its entirety, then section 22.082 conflicts with sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. 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 the legislature intended the general provision to prevail. *See id.* § 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.). Sections 552.136 and 552.147 are general exceptions to disclosure under the Act. As a general rule, the exceptions to disclosure found in the Act do not apply to information to which an individual has a statutory right of access. *See* Open Records Decision Nos. 583

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<sup>1</sup>SBEC’s administrative functions and services were transferred to the TEA, effective September 1, 2005. H.B. 1116, 79th Leg., R.S. (2005)

(1990) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act), 451 (1986) (same). Further, statutory access provisions prevail over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex.App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when it directly conflicts with common-law principle); *see also Cash Am. Intern. Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute depriving person of common-law right will not be extended beyond its plain meaning or applied to cases not clearly within its purview). Thus, the right of access afforded to the TEA investigators under section 22.082 prevails over section 552.101 in conjunction with common-law privacy, section 552.136, and section 552.147. However, section 552.130 of the Government Code specifically protects Texas motor vehicle record information and contains its own access provisions. Therefore, we find section 552.130 is not a general exception under the Act. Furthermore, because section 552.130 specifically protects specified information while section 22.082 provides the TEA with a general right of access, we find the confidentiality provision found in section 552.130 is more specific than the general right of access provided to the TEA under section 22.082. Accordingly, if the submitted information is a closed criminal investigation file, then the department must withhold the information you have marked under section 552.130 of the Government Code, but must release the remaining information to the requestor pursuant to section 22.082. If, however, the submitted information is not a closed criminal investigation file, then the department (1) must withhold the information we have marked under section 552.101 in conjunction with common-law privacy, (2) must withhold the information you have marked under sections 552.130 and 552.136, (3) may withhold the information you have marked under section 552.147, and (4) must release the remaining information to the requestor.

To conclude, the department must withhold the information you have marked under section 552.130 of the Government Code. If the submitted information is a closed criminal investigation, then the department must release the remaining information to the requestor pursuant to section 22.082 of the Education Code. If, however, the submitted information is not a closed criminal investigation, then the department (1) must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (2) must withhold the information you have marked under section 552.136 of the Government Code, (3) may withhold the information you have marked under section 552.147 of the Government Code, and (4) must release the remaining information to the requestor.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bs

Ref: ID# 428340

Enc. Submitted documents

c: Requestor  
(w/o enclosures)