



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2012

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2012-13606

Dear Ms. Bowling:

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# 463534.

The San Angelo Police Department (the "department") received a request for offense, incident, and investigative reports, including witness statements, audio or photographs, and confessions regarding a named individual and a specified case number. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted security camera video may be subject to the Family Educational Rights and Privacy Act ("FERPA"). The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which

¹A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

“personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). We note the department, which maintains the information at issue, is not an educational institution. *See* Open Records Decision No. 390 at 3 (1983) (City of Fort Worth is not an “educational agency” within FERPA). However, it appears the security camera video was obtained from the Texas Leadership Charter Academy. We note that FERPA contains provisions that govern access to education records that were transferred by an educational agency or institution to a third party. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address the applicability of FERPA to the security camera video. Such determinations under FERPA must be made by the educational authorities from which the education records were obtained. Accordingly, the department should contact the educational authorities from which the video was obtained and the DOE regarding the applicability of FERPA to the information at issue. To the extent the video is not governed by FERPA, we will address your arguments for the security camera video, as well as the remaining information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides as follows:

(a) Except as provided by Section 261.203, the 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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 as “person under 18 years of age who is not and has

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

not been married or who has not had the disabilities of minority removed for general purposes”). Therefore, we find the submitted information is within the scope of section 261.201(a) of the Family Code. We have no indication the department has adopted rules governing the release of this type of information; therefore, we assume no such regulations exist. Accordingly, we conclude the submitted information is generally confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 261.201(a) provides, however, 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). In this instance, 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 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.

In this instance, the requestor is an investigator with the TEA, which has assumed the duties of the State Board of Educator Certification (“SBEC”).³ The requestor states the TEA is conducting an investigation of a named individual who either has applied for or currently holds educator credentials. The requestor seeks access to information relating to a specific case involving the named individual.⁴ You inform us the submitted information is related to a case that is closed and concluded in a result other than conviction or deferred adjudication. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to the submitted information. *See* Educ. Code § 22.082.

However, section 261.201(a) states 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. If the department determines the release of submitted information 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); *see also* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive

³The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

⁴The requestor also claims a right to the information at issue under sections 261.308 and 261.406 of the Family Code. However, these statutes apply to information held by the Department of Family and Protective Services and not the department. *See* Fam. Code §§ 261.308, .406.

information under section 261.201 of the Family Code). If the department determines release of the submitted information is consistent with the Family Code, then the submitted information may not be withheld from this requestor under section 552.101 in conjunction with section 261.201 of the Family Code. Although you also raise section 552.108 of the Government Code for the submitted information, a specific access provision prevails over the general exceptions found in the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure).

However, in the event the department determines release of the submitted information is consistent with the Family Code, we note a portion of the submitted information is subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Therefore, we find the driver's license numbers we have indicated in the submitted information are generally confidential under section 552.130 of the Government Code.

Although the information we have indicated is confidential under section 552.130 of the Government Code, section 22.082 of the Education Code gives the requestor a right of access to the submitted information. A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the confidentiality of section 552.130 of the Government Code and the right of access afforded to the requestor by section 22.082. Where general and specific provisions are in irreconcilable conflict, the specific provision typically 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.). Although section 22.082 generally affords the TEA a special right of access to records contained in closed criminal investigation files that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 of the Education Code, section 552.130 specifically makes motor vehicle record information confidential. Thus, we find the confidentiality provision of section 552.130 prevails over the access provision of section 22.082. Therefore, in the event the department determines release of the submitted information is consistent with the Family Code, it must withhold the information we have indicated under section 552.130 of the Government Code.

In summary, if the department determines release of the submitted information is not consistent with the Family Code, it must withhold the submitted information under section 552.101 in conjunction with section 261.201 of the Family Code. If the department determines release of the submitted information is consistent with the Family Code, it may not withhold the submitted information under section 552.101 in conjunction with

section 261.201, and must release it to the requestor.⁵ However, in releasing the submitted information, the department must withhold the driver's license numbers we have indicated 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 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 463534

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note the requestor has a special right of access to the information the department is releasing. See Educ. Code § 22.082. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.