



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 27, 2013

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79408-2000

OR2013-14949

Dear Ms. Sims:

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# 498857.

The Lubbock Police Department (the "department") received a request from an investigator with the Texas Education Agency ("TEA") for information pertaining to a specified arrest. The department claims the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions 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. This section encompasses information protected by other statutes, including section 58.007 of the Family Code. Section 58.007(c) reads as follows:

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). For purposes of section 58.007(c), a “child” is defined as a person ten years of age or older and under seventeen years of age. *Id.* § 51.02(2)(A). The arrestee in the submitted information was not a person ten years of age or older and under seventeen years of age at the time of the offense. Therefore, the submitted information does not consist of law enforcement records of a juvenile for purposes of section 58.007. *See id.* Accordingly, the information is not confidential under section 58.007(c) of the Family Code, and the department may not withhold it under section 552.101 of the Government Code on that ground.

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

[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). Upon review, we find the submitted information was used or developed in an investigation by the department under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, we conclude the submitted information is confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

However, section 261.201 of the Family Code also provides 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). As noted above, the requestor is an investigator with TEA, which has assumed the duties of the State Board for Educator Certification (the “SBEC”).<sup>1</sup> The requestor claims section 22.082 of the Education Code gives the SBEC a right to the requested information and indicates the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials.<sup>2</sup> Section 22.082 of the Education Code provides the SBEC “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. You state the case at issue is closed. Thus, as the submitted information consists of a closed criminal investigation of an applicant for or a holder of a certificate issued under subchapter B, Chapter 21 of the Education Code, we find section 22.082 of the Education Code gives TEA a statutory right of access to the submitted information in its entirety. *See id.*; *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).

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 submitted information is consistent with the Family Code. Consequently, if the department determines release of the submitted information is not consistent with the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(b)-(g), (i), (k) (listing circumstances under which section 261.201 information can be released); 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). If the department determines release of the submitted information is consistent with the Family Code, then section 261.201 does not prohibit the release of the submitted information to the requestor in this case. *Id.* Although you also claim the submitted information is excepted from release under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on

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

<sup>2</sup>The 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, 261.406.

statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome Act's general exceptions to disclosure). Therefore, the department may not withhold the submitted information pursuant to section 552.108. Nevertheless, in that situation, we must consider whether the submitted information is otherwise excepted from disclosure.

We note some of the submitted information is excepted from disclosure under section 552.130 of the Government Code.<sup>3</sup> Section 552.130(a) 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.

Gov't Code § 552.130(a). The submitted photographs and recordings contain discernable license plate numbers that are confidential under section 552.130 of the Government Code. The motor vehicle record information we have marked in the submitted documents is also confidential on that ground.

Because section 22.082 of the Education Code authorizes the requestor to obtain the information in its entirety, while section 552.130 of the Government Code excepts from disclosure portions of the submitted information, section 22.082 conflicts with section 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 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.). 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 Texas motor vehicle record information, while section 22.082 provides 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

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

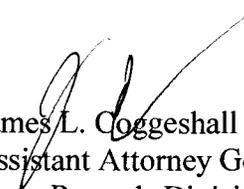
access provided to TEA by section 22.082. Accordingly, notwithstanding section 22.082, we conclude the department must withhold the information we have marked in the submitted documents, as well as the discernable license plate numbers in the submitted photographs and recordings, under section 552.130 of the Government Code.

To conclude, if the department determines release of the submitted information to the requestor is not consistent with the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines release of the submitted information to the requestor is consistent with the Family Code, then the department must withhold the information we have marked, as well as the discernable license plate numbers in the submitted photographs and recordings, under section 552.130 of the Government Code and 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 498857

Enc. Submitted documents

c: Requestor  
(w/o enclosures)