



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 13, 2013

Ms. Andrea D. Russell  
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Fort Worth, Texas 76107

OR2013-19773

Dear Ms. Russell:

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# 505490.

The Euless Police Department (the "department"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports regarding a named individual, including information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 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." Gov't Code § 552.101. This section encompasses information protected by other statutes such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted information pertains to an investigation of alleged or suspected child abuse by the department and, thus, falls within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), 22.021(b)(1). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we determine the submitted information is generally confidential pursuant to 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.” Fam. Code § 261.201(a). In this instance, section 22.082 of the Education Code constitutes applicable state law. Section 22.082 provides 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.* §§ 411.0901 (TEA is entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) relating to certain employees of schools), .090 (State Board for Educator Certification (the “SBEC”) is entitled to obtain CHRI from DPS about a person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code), .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).

As previously noted, the requestor is an investigator with 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. The requestor seeks access to information relating to a specific case involving the named individual.<sup>2</sup> Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to CHRI regarding the individual or all records contained in a closed criminal investigation file relating to the individual. However, as noted above, section 261.201(a) states any release must be "for purposes consistent with the Family Code." *See* Fam. Code § 261.201(a). This office is unable to determine whether release of the information is consistent with the Family Code. Moreover, you do not inform us, and the submitted information does not otherwise reflect, whether the criminal investigation to which the information pertains is closed. Accordingly, we must rule in the alternative.

Thus, if the department determines the release of the information at issue is not consistent with the Family Code, then the submitted information must be withheld from the requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 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); *see also* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive Fam. Code § 261.201 information). If the department determines the release of CHRI is consistent with the Family Code, and the information is not contained in a closed investigation file, then pursuant to section 22.082, 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. Educ. Code § 22.082. In that event, the department must withhold the remainder of the submitted information 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 information is consistent with the Family Code and the submitted information is contained in a closed investigation file, then no portion of the submitted information may be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In that event, we must consider whether any portion of the submitted information is otherwise excepted from disclosure.

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<sup>1</sup>The 79th Texas legislature passed House Bill 1116, which required the transfer of the SBEC's administrative functions and services to the 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 Texas Department of Family and Protective Services and not the department. *See* Fam. Code §§ 261.308, .406.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Therefore, the department must generally withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. The MPA provides, in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the information we have marked constitutes medical records. As such, the department must generally withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release. *See Gov’t Code* § 552.130(a)(1). Accordingly, the motor vehicle record information we have marked is generally confidential under section 552.130 of the Government Code.

Because the submitted information includes confidential information under section 552.101 of the Government Code in conjunction with the MPA and section 560.003 of the Government Code, and under section 552.130 of the Government Code, we must consider whether the requestor in this case, as a TEA investigator, may nevertheless obtain the records at issue. Because section 22.082 of the Education Code authorizes the requestor to obtain information in its entirety, while the MPA and sections 560.003 and 552.130 of the Government Code except from disclosure portions of the submitted information, we find section 22.082 is in conflict with the MPA and sections 560.003 and 552.130. Where

information falls within both a general and specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *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 No. 451 (1986). Although section 22.082 of the Education Code generally allows a TEA investigator access to files of a closed criminal investigation, the MPA specifically protects medical records, section 560.003 of the Government Code specifically protects biometric identifiers, and section 552.130 of the Government Code specifically protects motor vehicle record information. These sections specifically permit release to certain parties and in circumstances that do not include the TEA representative’s request in this instance. We therefore conclude, notwithstanding section 22.082, if the submitted information is a closed criminal investigation file, then the department must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA, the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, and the motor vehicle record information we have marked under section 552.130 of the Government Code.

You also assert some of the submitted information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.147 of the Government Code. We note, however, section 552.147 is a general exception to disclosure under the Act and a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). Furthermore, although you raise common-law privacy, a specific statutory right of access also prevails 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 statute directly conflicts with common law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, because the requestor in this instance has a statutory right of access to the information at issue, the department may not withhold any of this information from the requestor under section 552.101 in conjunction with common-law privacy or under section 552.147.

In summary, if the department determines the release of the information at issue is not consistent with the Family Code, then the submitted information must be withheld from the requestor in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the release of CHRI is consistent with the Family Code and the information is not contained in a closed investigation file, then pursuant to section 22.082 of the Education Code, 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, and must withhold the remainder 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 the release of information is consistent with the Family Code and the submitted information is contained in a closed investigation file, then the department must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA, the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, and the motor vehicle record information we have marked under section 552.130 of the Government Code and must release the remaining information to this requestor pursuant to section 22.082 of the Education Code.<sup>3</sup>

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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 505490

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Because this requestor may have a special right of access to some or all of the submitted information, the department must again seek a decision from this office if it receives another request for this same information from another requestor.