



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2013

Ms. Lysia H. Bowling
City Attorney
City of San Angelo
72 West College Avenue
San Angelo, Texas 76903

OR2013-20156

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# 506216.

The San Angelo Police Department (the "department") received a request from an investigator with the Texas Education Agency ("TEA") for information pertaining to three specified incidents that involve a named individual. The department states it has released some of the requested information, but claims the submitted 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. Section 261.201(a) of the Family Code provides in relevant part as follows:

[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 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 Exhibit C was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, this 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 determine Exhibit C is generally confidential pursuant to section 261.201 of the Family Code.

However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Section 22.082 of the Education Code constitutes “applicable state law.” Section 22.082 provides 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 entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”), .090 (State Board for Educator Certification (“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), .0901 (TEA is entitled to obtain CHRI from DPS relating to certain employees of schools); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. 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).

The requestor is an investigator with TEA, which has assumed the duties of SBEC.¹ TEA is conducting an investigation of the named individual and we understand the named individual either has applied for or currently holds educator credentials. You state Exhibit C

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

relates to a pending criminal investigation of the named individual. Accordingly, TEA has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual in Exhibit C.² Although you seek to withhold Exhibit C under section 552.108(a)(1) of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, if the department determines the release of the CHRI in Exhibit C is consistent with the Family Code, then the department must (1) release information from Exhibit C 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 (2) withhold the remainder of Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines the release of the CHRI in Exhibit C is not consistent with the Family Code, then the department must withhold Exhibit C 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 information under section 261.201 of the Family Code).

Next, you inform us Exhibit B consists of a completed criminal investigation of the named individual. TEA has a right of access under section 22.082 to all records contained in a closed criminal investigation file involving the named individual. *See* Educ. Code § 22.082. Although you seek to withhold this information under section 552.108(a)(2) of the Government Code, as previously discussed a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See* ORD Nos. 613 at 4, 451. Therefore, section 22.082 of the Education Code generally gives TEA a statutory right of access to Exhibit B in its entirety. *See* Educ. Code § 22.082; *cf. Brookshire*, 508 S.W.2d at 678-79.

However, we note some of the information in Exhibit B is excepted from disclosure under section 552.130 of the Government Code.³ Section 552.130(a) provides the following:

²The 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.

³The 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).

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). Exhibit B contains motor vehicle record information, which we have marked, that the department must generally withhold under section 552.130 of the Government Code.

Because section 22.082 of the Education Code authorizes the requestor to obtain Exhibit B in its entirety, while section 552.130 of the Government Code excepts from disclosure portions of this exhibit, 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 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 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 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 Exhibit B under section 552.130 of the Government Code.

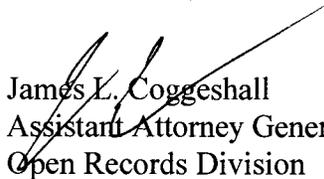
To conclude, if the department determines release of the CHRI in Exhibit C is consistent with the Family Code, then the department must release from Exhibit C information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 22.082 of the Education, but must withhold the remaining information in Exhibit C 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 CHRI in Exhibit C is not consistent with the Family Code, then the department must withhold Exhibit C in its entirety section 552.101 of the Government Code in conjunction with section 261.201 of the

Family Code. The department must withhold the information we have marked in Exhibit B under section 552.130 of the Government Code, but must release the remaining information in this exhibit to the requestor pursuant to section 22.082 of the Education Code.⁴

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, 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# 506216

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.