



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2014

Ms. Donna L. Johnson
Counsel for the City of Humble
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133

OR2014-03748

Dear Ms. Johnson:

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# 514611 (Ref. No. COHM13-042).

The City of Humble (the "city"), 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 case. We understand you will redact motor vehicle record information under section 552.130(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code.² Additionally, you provide documentation showing you have notified the named individual of her right to submit comments to this office explaining why the submitted information should not be released.³ See Gov't Code § 552.304 (interested party may submit comments stating why

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

²Although you do not raise section 552.147 of the Government Code in your brief, we understand you to raise this exception based on your markings.

³As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

information should or should not be released). 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 statutes, such as section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(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 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). You inform us the submitted information pertains to an investigation of alleged or suspected child abuse conducted by the city's police department (the "department"). *See id.* §§ 261.001(1)(E) (definition of "abuse" for purposes of chapter 261 of the Family Code includes indecency with a child under Penal Code section 21.11), 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You do not indicate the department has adopted a rule that governs the release of this type of information. Thus, we assume no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 State Board of Educator Certification (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 [of the Education Code]." Educ. Code § 22.082. As previously noted, the requestor is an investigator with the TEA, which has assumed the duties of the

SBEC.⁴ The requestor states the TEA is conducting an investigation of the named individual who either has applied for or currently holds educator credentials.⁵ You inform us the submitted information relates to a closed criminal investigation. Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to the submitted information in its entirety.

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 cannot determine whether the release of the submitted information is consistent with the Family Code. Thus, if the city 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), (i), (k) (listing entities authorized to receive Fam. Code § 261.201 information). However, if the city determines release of the information at issue 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. Although you seek to withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and sections 552.108 and 552.147 of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act and 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* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 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, the city may not withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, section 552.108 of the Government Code, or section 552.147 of the Government Code. Nevertheless, in that

⁴The 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. Chapter 21 of the Education Code authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators. *See* Educ. Code § 21.031(a). Section 21.041 of the Education Code states that the SBEC may “provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code.” *Id.* § 21.041(b)(7). Section 21.041 also authorizes the SBEC to “adopt rules as necessary for its own procedures.” *Id.* § 21.041(a).

⁵The 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 city. *See* Fam. Code §§ 261.308, .406.

situation, we must consider whether the submitted information is otherwise excepted from disclosure.

You also seek to withhold some of the submitted information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. Section 1703.306 provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a), (b). The submitted information contains information acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, the polygraph information is generally confidential under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Because the submitted information includes confidential information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations 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 section 1703.306 of the Occupations Code excepts from disclosure portions of the submitted information, we find section 22.082 is in conflict with the section 1703.306. 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); ORD 451. Although section 22.082 of the Education Code generally allows a TEA investigator access to files of a closed criminal investigation, section 1703.306 of the Occupations Code specifically protects polygraph information. This section specifically permits 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, the city must withhold the polygraph information, which we have marked, under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

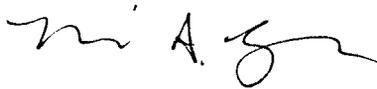
In summary, if the city determines the release of the information at issue is not consistent with the Family Code, then the submitted information must be withheld from the requestor

in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the city determines the release of the information is consistent with the Family Code, then the city must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code and must release the remaining information to this requestor pursuant to section 22.082 of the Education Code.⁶

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 514611

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosure)

⁶Because this requestor may have a special right of access to some or all of the submitted information, the city must again seek a decision from this office if it receives another request for this same information from another requestor.

