



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2007

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
Criminal Law and Police Division
1400 South Lamar
Dallas, Texas 75215

OR2007-13689

Dear Ms. Armstrong:

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# 292192.

The Dallas Police Department (the "department") received a request from an investigator with the Texas Education Agency ("TEA") for all offense and investigative reports, witness statements, and confessions regarding a named individual and a specified incident. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor's agency. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This section encompasses information protected by other statutes, including section 261.201(a) of the Family Code, which provides as follows:

(a) The 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). You state that the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Thus, based on your representation and our review, we find that this information is generally confidential under section 261.201 of the Family Code.

We note, however, that the requestor is an investigator with the TEA, which has assumed the duties of the State Board of Educator Certification (the “SBEC”).² Section 22.082 of the Education Code provides that the 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.” Act of May 29, 1995, 74th Leg., R.S., ch. 260, 1995 Tex. Gen. Laws 2007, 2285, *amended by* Act of May 28, 2007, 80th Leg., R.S., ch. 1372, § 6, 2007 Tex. Sess. Law Serv. 4658, 4659. The submitted offense report is part of a closed criminal investigation file that relates to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21. Accordingly, pursuant to section 22.082, the TEA may obtain the submitted information in its entirety. *See* Educ. Code § 22.082.

Thus, the instant situation presents a conflict between section 261.201 of the Family Code and section 22.082 of the Education Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See* Gov’t Code § 311.026; *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction,

²The 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.

specific statutory provisions prevail over general ones); Open Records Decision Nos. 583 (1990), 451 (1986). Furthermore, we note that the Code of Construction Act provides that “if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.” *See* Gov’t Code § 311.025(a). In this instance, section 22.082 of the Education Code, as amended by the 80th Legislature, now specifically grants TEA access to not only criminal history record information but to all records contained in any closed criminal investigation file. Educ. Code § 22.082. TEA’s access to all records in a closed criminal investigation file that relates to an applicant or educator under section 22.082 is more specific than the general confidentiality provision of section 261.201 of the Family Code. We also note that the amendment to section 22.082 was enacted after section 261.201 of the Family Code. *See* Gov’t Code § 311.025(a). We therefore conclude that the submitted information must be released to this requestor in its entirety under section 22.082 of the Education Code.³

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

³As we are able to reach this conclusion, we need not address the requestor’s remaining contentions.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/ceg

Ref: ID# 292192

Enc. Submitted documents

c: Mr. Scott Byram, Investigator
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494
(w/o enclosures)