



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2007

Ms. Judith Sachitano Rawls  
Assistant City Attorney  
City of Beaumont  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2007-16779

Dear Ms. Rawls:

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# 297696.

The Beaumont 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 sections 552.101 and 552.108 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, 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). The submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code, ch. 261); *see also id.* § .001(1)(e) (definition of child abuse includes sexual assault, aggravated sexual assault, and indecency with a child under Penal Code sections 22.011, 22.021, and 22.11). Thus, 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”).<sup>1</sup> 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, 74<sup>th</sup> Leg., R.S., ch. 260, 1995 Tex. Gen. Laws 2007, 2285, *amended by* Act of May 28, 2007, 80<sup>th</sup> Leg., R.S., ch. 1372, § 6, 2007 Tex. Sess. Law Serv. 4658, 4659. The submitted information consists 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, specific statutory provisions prevail over general ones); Open Records Decision Nos. 583 (1990), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). 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 80<sup>th</sup> Legislature, now specifically grants TEA access to not only criminal history record information but to all

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

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 because it is a closed criminal investigation file that relates to a specific applicant for or holder of a certificate.<sup>2</sup> *See* Educ. Code § 22.082. You claim, however, that the submitted information is confidential under section 58.007 of the Family Code and section 40.005 of the Human Resources Code.

Section 552.101 also encompasses 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 Subchapter B.

Fam. Code § 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect, offender, or defendant. In this instance, the juvenile at issue is not listed as a suspect, offender, or defendant. Therefore, the submitted report is not confidential under section 58.007(c) of the Family Code, and the department may not withhold it on that basis under section 552.101 of the Government Code.

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<sup>2</sup>As our ruling is dispositive, we need not address your argument under section 552.108 of the Government Code.

Section 40.005 of the Human Resource Code provides statutory authority for the Department of Family and Protective Services (“DFPS”) to promulgate rules regarding release of the DFPS’s records. Section 40.005 reads as follows:

- (a) [DFPS] shall establish and enforce rules governing the custody, use, and preservation of [DFPS] records, papers, files, and communications.
- (b) [DFPS] shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a [DFPS] service or to an investigation the [DFPS] conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of [DFPS] programs and must comply with applicable state and federal law and [DFPS] rules.

Hum. Res. Code § 40.005. In accordance with section 40.005, DFPS promulgated section 700.201 through 700.207 of title 40 of the Texas Administrative Code. We note that section 700.203 allows DFPS to disclose information protected under section 261.201 of the Family Code to local law enforcement officials, such as the department. *See* 40 T.A.C. § 700.203. We also note that a portion of the submitted information consists of records obtained from Child Protective Services. Because we have already determined that section 22.082 of the Education Code is more specific than section 261.201 of the Family Code, the submitted information may not be withheld under section 700.201 through 700.207 of title 40 of the Texas Administrative Code. Accordingly, the submitted information must be released in its entirety to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

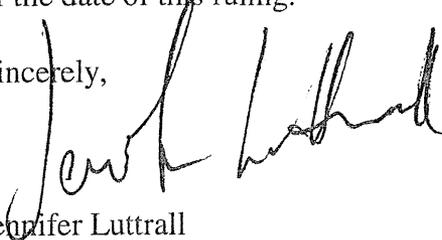
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 297696

Enc. Submitted documents

c: Mr. Juan Flores  
Staff Investigator  
Texas Education Agency  
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(w/o enclosures)