



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2014

Ms. Cheryl Elliott Thornton  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2014-05432

Dear Ms. Thornton:

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# 521093 (C.A. File No. 14PIA0052)

The Harris County Sheriff's Office (the "sheriff's office") 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 number. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 58.007 of the Family Code, which provides, in pertinent part, as follows:

(c) 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct at issue. *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 or offender. You contend the submitted information is subject to section 58.007(c). However, we find the submitted information does not constitute a juvenile law enforcement record relating to delinquent conduct or conduct indicating a need for supervision of a juvenile suspect or offender. Accordingly, we find the sheriff’s office has not demonstrated the applicability of section 58.007(c) to the submitted information; thus, the sheriff’s office may not withhold it under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses 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.

*Id.* § 261.201(a). The submitted information pertains to an investigation of alleged or suspected child abuse by the sheriff's office and, thus, falls within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of section 261.201 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). As you do not indicate the sheriff's office 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(a) of the Family Code.

However, section 261.201 of the Family Code also provides information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a). As noted above, the requestor is an investigator with the TEA, which has assumed the duties of the State Board for Educator Certification (the "SBEC").<sup>1</sup> The requestor claims section 22.082 of the Education Code gives the SBEC a right to the requested information and indicates the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials.<sup>2</sup> Section 22.082 of the Education Code provides 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." Educ. Code § 22.082. We note the case at issue is closed. Thus, as the submitted information consists of a closed criminal investigation of an applicant for or a holder of a certificate issued under subchapter B, Chapter 21 of the Education Code, we find section 22.082 of the Education Code gives the TEA a statutory right of access to the submitted information in its entirety. *See id.*; *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 latter statute, later use of term is same as previously defined).

However, section 261.201(a) states the release must be "for purposes consistent with the Family Code." *See* Fam. Code § 261.201(a). This office cannot determine whether release of the submitted information is consistent with the Family Code. Consequently, if the sheriff's office determines release of the submitted information is not consistent with the Family Code, then the sheriff's office must withhold the submitted information in its entirety

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

under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(b)-(g), (i), (k) (listing circumstances under which section 261.201 information can be released); 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). If the sheriff's office determines release of the submitted information 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. *Id.* Although you also claim the submitted information is excepted under section 552.101 of the Government Code in conjunction with common law privacy, a specific statutory right of access to information prevails over the common-law. *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); *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). Therefore, the sheriff's office may not withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Nevertheless, in that situation, we must consider whether the submitted information is otherwise excepted from disclosure.

We note the submitted information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release.<sup>3</sup> Gov't Code § 552.130(a)(1). Upon review, we find the driver's license information is generally confidential under section 552.130 of the Government Code.

Because the remaining information includes confidential information 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 information at issue. Because section 22.082 of the Education Code authorizes the requestor to obtain information in its entirety, while section 552.130 of the Government Code excepts from disclosure portions of the remaining information, we find section 22.082 is in conflict with section 552.130 of the Government Code. 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

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, section 552.130 of the Government Code specifically protects motor vehicle record information. This section specifically permits release to certain parties and in circumstances that do not include the TEA representative's request in this instance. Therefore, we conclude, notwithstanding section 22.082, the sheriff's office must withhold the motor vehicle record information in the submitted information under section 552.130 of the Government Code.

In summary, if the sheriff's office determines the release of the submitted 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 sheriff's office determines the release of information is consistent with the Family Code, then the sheriff's office must withhold the motor vehicle record information 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>4</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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

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<sup>4</sup>Because this requestor may have a special right of access to some of the submitted information, the sheriff's office must again seek a decision from this office if it receives another request for this same information from another requestor.

Ref: ID# 521093

Enc. Submitted documents

c: Requestor  
(w/o enclosures)