



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2014

Ms. Andrea D. Russell  
Counsel for City of Euless  
Taylor Olson Adkins Sralla Elam  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2014-05801

Dear Ms. Russell:

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# 519095.

The Euless Police Department (the "department"), 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 incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of

individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You argue the present request requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. We note, however, the submitted information consists of the report specified in the request. This information is not part of a criminal history compilation and, thus, does not implicate this individual's right to privacy. As such, the department may not withhold this information in its entirety under section 552.101 of the Government Code on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the information you have indicated is generally confidential under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not within the scope of section 552.137(c). Accordingly, we find the e-mail addresses you have indicated are generally confidential under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147. Upon review, we find the information you have indicated is generally subject to section 552.147 of the Government Code.

We now consider the requestor's possible right of access to the submitted report in its entirety. Section 22.082 of the Education Code provides that 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. In this instance, the requestor is an investigator for TEA, which has assumed the duties of the State Board for Educator Certification (the "SBEC").<sup>1</sup> The requestor states TEA is conducting an investigation of the named individual, who either has applied for or currently holds educator credentials. Subchapter C of

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<sup>1</sup>SBEC's administrative functions and services were transferred to the TEA, effective September 1, 2005. H.B. 1116, 79th Leg., R.S. (2005).

chapter 22 of the Education Code and section 22.082 in particular concern access to "criminal history records" of school district personnel. *See id.* ch. 22, subch. C. Accordingly, TEA has a right of access under section 22.082 to all records contained in a closed criminal investigation file that involves the named individual as a suspect or arrestee. *Id.* § 22.082. The submitted report involves the named individual as a suspect. You do not indicate whether this report is contained in a closed criminal investigation file. Therefore, we must rule in the alternative. To the extent the submitted report is contained in a closed criminal investigation file, TEA has a statutory right of access to this report pursuant to section 22.082. In this event, we note sections 552.137 and 552.147 are general exceptions to disclosure under the Act, and as a general rule, are not applicable to information that a statute other than the Act expressly makes public. *See Open Records Decision No. 623 at 3 (1994)*. We therefore hold that, in the event TEA has a statutory right of access to the report pursuant to section 22.082, the department may not withhold any portion of the report under section 552.137 or section 552.147. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act)*.

However, because section 552.130 of the Government Code contains its own access provisions, we find section 552.130 is not a general exception under the Act. Furthermore, because section 22.082 authorizes the requestor to obtain the submitted report in its entirety and section 552.130 of the Government Code excepts from disclosure portions of this report, 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 Gov't Code § 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.). 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 under section 22.082. Accordingly, to the extent the submitted report is contained in a closed criminal investigation file, we conclude the department must withhold the information within this report subject to section 552.130 of the Government Code, but must release the remainder of this report to this requestor pursuant to section 22.082. Conversely, to the extent the submitted report is not contained in a closed criminal investigation file, the department must withhold the information you have indicated under sections 552.130 and 552.137, may withhold the information you have indicated under section 552.147, and must release the remainder of the report.

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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping initial "M".

Megan G. Holloway  
Assistant Attorney General  
Open Records Division

MGH/akg

Ref: ID# 519095

Enc. Submitted documents

c: Requestor  
(w/o enclosures)