



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 27, 2014

Mr. Daniel Ortiz  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2014-19279

Dear Mr. Ortiz:

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# 540724 (Ref. No. 14-1026-4631).

The El Paso Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports pertaining to a named individual, including a specified incident. You claim 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.

Initially, we note you have not submitted information pertaining to the incident specified in the request. Therefore, to the extent information responsive to this portion of the request exists, we assume you have released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses 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. This office has found 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. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records, other than those pertaining to the specified incident, listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, as noted above, the requestor is an investigator with the TEA and states he is requesting on behalf of the TEA, and the named individual has either applied for or currently holds educator credentials. 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 [of the Education Code]." Educ. Code § 22.082. We understand the submitted incident report pertains to a closed investigation; therefore, the requestor has a statutory right of access to the information at issue pursuant to section 22.082. We note statutory access provisions prevail over 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 it directly conflicts with common-law principle); *see also Cash Am. Int'l Inc. v. Bennett*, 35 SW.3d 12, 16 (Tex. 2000) (statute depriving person of common-law right will not be extended beyond its plain meaning or applied to cases not clearly within its purview). Thus, the right of access afforded to the TEA investigators under section 22.082 prevails over section 552.101 in conjunction with common-law privacy and the information at issue must generally be released to this requestor.

We note, however, the information being released 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>1</sup> Gov't Code § 552.130(a)(1). Upon review, we find the motor vehicle record information we marked is generally confidential under section 552.130 of the Government Code.

Because the information at issue 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. 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; as such, 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 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 department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor pursuant to section 22.082 of the Education Code.<sup>2</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/>

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<sup>1</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note this requestor has a special right of access under section 22.082 of the Education Code to the information being released. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

[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, appearing to read "N. A. Ybarra".

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bhf

Ref: ID# 540724

Enc. Submitted documents

c: Requestor  
(w/o enclosures)