



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 9, 2015

Ms. Sarah R. Martin
Assistant City Attorney
Legal Division
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2015-06852

Dear Ms. Martin:

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# 559585 (Department Ref. No. 19185).

The Arlington Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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. Section 552.101 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

¹Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim section 552.108 applies to the submitted information. See Gov't Code §§ 552.301, .302.

satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, although you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy, we find this is not a situation in which the entirety of the submitted information must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the information under section 552.101 of the Government Code. Upon review, though, we find the information identifying the victim satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department generally must withhold the identifying information of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestor indicates he is an employee of the Texas Education Agency (the “TEA”), 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. The submitted incident report reveals the investigation is closed; 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 S.W.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.² Gov't Code § 552.130(a)(1). Upon review, we find the department generally must withhold the motor vehicle record information we marked 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 in the submitted information under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.130. The department must release the remaining information to this requestor pursuant to section 22.082 of the Education Code.³

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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

³We 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.

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, 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 blue ink, appearing to read "Lee Seidlits".

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 559585

Enc. Submitted documents

c: Requestor
(w/o enclosures)