



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 18, 2015

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

OR2015-09591

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# 563838 (Ref. No. 20020).

The Arlington Police Department (the "department") received a request for information concerning a specified incident involving a named individual. 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.

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 of the Government Code encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides as follows:

- (a) Except as provided by Section 261.203, the 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 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 pertains to an investigation of alleged child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of this section 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 department 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 of the Family Code.

Section 261.201(a) provides, however, that 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). In this instance, section 22.082 of the Education Code constitutes “applicable state law.” Section 22.082 provides that the Texas Education Agency (“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. CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2); *see also id.* §§ 411.0901 (TEA is entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) relating to certain employees of schools), .090 (State Board for Educator Certification (“SBEC”) is entitled to obtain CHRI from DPS about a person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code), .087(a)(2) (agency entitled to obtain CHRI from DPS also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”); *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 later statute, later use of term is same as previously defined).

In this instance, the requestor is an investigator with the TEA, which has assumed the duties of SBEC.<sup>1</sup> The requestor states the TEA is conducting an investigation of the named individual who either has applied for or currently holds educator credentials. The requestor seeks access to information relating to a specific case involving the named individual.<sup>2</sup> Accordingly, the requestor may have a right of access under section 22.082 of the Education Code to CHRI regarding the individual or all records contained in a closed criminal investigation file relating to the individual. However, as noted above, section 261.201(a) states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office is unable to determine whether release of the information is consistent with the Family Code. Moreover, you do not inform us, and the submitted information does not otherwise reflect, whether the criminal investigation to which the information pertains is closed. Accordingly, we must rule in the alternative.

Thus, if the department determines the release of the 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. *See* 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); *see also* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive Fam. Code § 261.201 information). If the information is not contained in a closed investigation file, and the department determines that the release of CHRI is consistent with the Family Code, then the department must release information from the submitted documents that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *Id.* In that event, the department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the submitted information is contained in a closed investigation file, and if the department determines that release of the 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.* 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

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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.

<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 department. *See* Fam. Code §§ 261.308, .406.

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 motor vehicle record information we marked 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 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 marked under section 552.130 of the Government Code.

In summary, if the department determines the release of the 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 information is not contained in a closed investigation file, and the department determines that the release of CHRI is consistent with the Family Code, then the department must release information from the submitted documents that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions; in that event, the department must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the submitted information is contained in a closed investigation file, and if the department determines that release of the information is consistent with the Family Code, then department must withhold the information we marked under section 552.130 of the Government Code and release the remaining information to the requestor pursuant to section 22.082 of the Education Code.

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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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 cursive script that reads "Britni Fabian".

Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/som

Ref: ID# 563838

Enc. Submitted documents

c: Requestor  
(w/o enclosures)