



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2015

Mr. Jason Cozza
City Secretary/Administrator
City of Hallettsville
101 North Main
Hallettsville, Texas 77964

OR2015-23838

Dear Mr. Cozza:

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# 586819.

The Hallettsville Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 section 261.201(a) of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). We find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). You have not indicated the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the submitted information is generally confidential under section 261.201 of the Family Code.

In this instance, as previously noted, the requestor is a staff investigator with the TEA. The TEA investigator’s request states he is seeking this information under the authority provided to the State Board for Educator Certification (“SBEC”) by section 249.14 of title 19 of the Texas Administrative Code.¹ Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. § 249.4. Section 249.14 provides, in relevant part:

(a) The [TEA] staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the [SBEC] denying relief to or taking disciplinary action against the person or certificate.

...

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

Id. § 249.14(a), (c). The TEA requestor states he is investigating alleged improper conduct by or criminal history information regarding the named employee, which could warrant disciplinary action relating to that person’s educator certification. Thus, we find the information at issue is generally subject to the right of access afforded to the TEA under section 249.14. However, because the submitted information is specifically protected from public disclosure by section 261.201 of the Family Code, we find there is a conflict between

¹The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to TEA, effective September 1, 2005. Chapter 21 of the Education Code authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators. *See* Educ. Code § 21.031(a). Section 21.041 of the Education Code states that the SBEC may “provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code.” *Id.* § 21.041(b)(7). Section 21.041 also authorizes the SBEC to “adopt rules as necessary for its own procedures.” *Id.* § 21.041(a).

this statutes and the right of access afforded to TEA investigators under section 249.14 of the Texas Administrative Code.

Where general and specific provisions are in irreconcilable conflict, the specific provision typically 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); *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). Section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator. However, section 261.201 of the Family Code specifically protects child abuse or neglect investigative information. This section specifically permits release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Thus, section 261.201 of the Family Code prevails over the general TEA right of access and, notwithstanding the provisions of section 249.14, the TEA does not have a right of access under section 249.14 to the submitted information.

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 the 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 (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).

As previously noted, the requestor is an investigator with the TEA, which has assumed the duties of SBEC, and 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 a specified case involving the named individual. The department's investigation is now closed. Accordingly, the requestor has a right of access under

section 22.082 of the Education Code to the submitted information. Although the department seeks to withhold this information under section 552.108 of the Government Code, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the department may not withhold the submitted information under section 552.108 of the Government Code. 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.

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 department determines that release of the information is consistent with the Family Code, then the submitted information must generally be released to the requestor in its entirety pursuant to section 22.082 of the Education Code. *See* ORD 451.

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 license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.² *See* Gov’t Code § 552.130. Upon review, we find the motor vehicle record information we have marked is confidential under section 552.130 of the Government Code.

Because the submitted 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 submitted 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

²The 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).

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). 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. Section 552.130 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, 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. In the event the department determines that release of the submitted information is consistent with the Family Code, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and release the remaining information.

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, 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 586819

Enc. Submitted documents

c: Requestor
(w/o enclosures)