



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 1, 2016

Mr. Bill Delmore  
Assistant District Attorney  
9<sup>th</sup> Judicial District  
County of Montgomery  
207 West Phillips, 2<sup>nd</sup> Floor  
Conroe, Texas 77301

OR2016-12438

Dear Mr. Delmore:

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# 612865.

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for fourteen categories of information relating to criminal proceedings against 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.

The district attorney's office asserts Appendix D consists of documents pertaining to the outcome of a grand jury proceeding and must be withheld under section 552.101 of the Government Code in conjunction with article 20.02 of the Code of Criminal Procedure. 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 article 20.02(a) of the Code of Criminal Procedure, which provides "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). Article 20.02, however, does not define "proceedings" for purposes of subsection (a). The Fourth Court of Appeals in *In re Reed* addressed the issue of what constitutes "proceedings" for purposes of article 20.02(a) and stated the term "proceedings" could "reasonably be understood as encompassing matters that take place before the grand

jury, such as witness testimony and deliberations.” *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding).

Subsequent to the ruling in *Reed*, the 80th Legislature, modeling federal law, added subsection (h) to article 20.02. *See* Crim. Proc. Code art. 20.02; FED. R. CRIM. P. 6(e)(6) (“Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.”). Article 20.02(h) states “[a] subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” Crim. Proc. Code art. 20.02(h). This provision, however, does not define or explain what factors to consider in making such a determination, and even if we considered article 20.02 to be a confidentiality provision, information withheld under this statute would be secret only “for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” *Id.*

You seek to withhold some of the submitted information, which pertains to a case in which the grand jury has returned a no bill of indictment, under section 552.101 of the Government Code in conjunction with article 20.02 of the Criminal Code of Procedure. However, you have not submitted any arguments explaining the matter upon which Appendix D was based is still “before the grand jury” to warrant keeping it secret. Therefore, upon review of article 20.02 and related case law, it is not apparent, and you have not otherwise explained, how this provision makes Appendix D confidential. *See* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Consequently, Appendix D may not be withheld under section 552.101 of the Government Code in conjunction with article 20.02 of the Criminal Code of Procedure.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides as follows:

[T]he 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 district attorney's office asserts the requested information was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Upon review, we find the information is within the scope of section 261.201 of the Family Code. Accordingly, the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code.<sup>1</sup>

However, section 261.201(a) provides information encompassed by this section may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a). We note section 22.082 of the Education Code constitutes such "applicable state law." Section 22.082 provides the Texas Education Agency ("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.

In this instance, the requestor is an investigator with the TEA, which has assumed the duties of SBEC.<sup>2</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 a specified case involving the named individual. The district attorney's office'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. 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 district attorney's office 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

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<sup>1</sup>We note you raise section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code. However, we note section 264.408 of the Family Code provides "[i]nformation related to the investigation of a report of abuse or neglect under [c]hapter 261 and services provided as a result of the investigation is confidential as provided by [s]ection 261.201 [of the Family Code]." *See* Fam. Code § 264.408(b). Accordingly, as the submitted information is subject to section 261.201, we need not address your argument under section 264.408 of the Family Code.

<sup>2</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.

(1986); *see also* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive Fam. Code § 261.201 information). If the district attorney's office 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* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act).

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.<sup>3</sup> *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 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 permit 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 district attorney's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the district attorney's office 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 district attorney's

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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).

office determines that release of the submitted information is consistent with the Family Code, the district attorney's office must withhold the motor vehicle record information we 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](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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/som

Ref: ID# 612865

Enc. Submitted documents

c: Requestor  
(w/o enclosures)