



February 18, 2015

Mr. Brandon W. Carr
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-03194

Dear Mr. Carr:

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# 554458 (ORR# W038790).

The City of Fort Worth (the "city") received a request for information pertaining to a specified accident. You state the city has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in part, as follows:

(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:

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

(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 relates to an investigation of alleged or suspected child abuse or neglect conducted by the city's police department (the "department"). *See id.* §§ 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), 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is confidential pursuant to section 261.201 of the Family Code, and the city must generally withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the submitted information contains a CR-3 accident report completed under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). However, section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this instance, as you acknowledge, the requestor has provided the required information pursuant to section 550.065(c)(4). Thus, although the submitted information is generally confidential under section 261.201 of the Family Code, section 550.065(c)(4) requires the accident report to be released to this requestor because he supplied the required information.

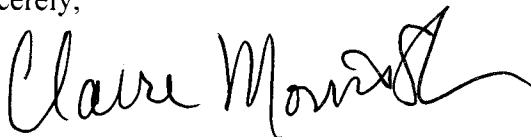
Therefore, we must address the conflict between the confidentiality provided under section 261.201 of the Family Code and the right of access provided under section 550.065(c)(4) of the Transportation Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically 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); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 261.201 generally pertains to all records of alleged child abuse or neglect, section 550.065(c)(4) specifically pertains to

accident reports. Therefore, we find section 550.065 is more specific than, and prevails over, section 261.201. We note although you also seek to withhold the CR-3 accident report under section 552.101 in conjunction with common-law privacy and section 552.108 of the Government Code, a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* 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). Further, when a statute directly conflicts with a common-law principle or claim, the statutory provision controls and preempts 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 the statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the city may not withhold any portion of the CR-3 accident report under common-law privacy or section 552.108. Therefore, the city must release the CR-3 accident report in its entirety to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Ref: ID# 554458

Enc. Submitted documents

c: Requestor
(w/o enclosures)