



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2016

Ms. Michelle Buendia
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2016-18311

Dear Ms. Buendia:

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# 622271 (ORR Nos. 2016-06484, 2016-07041, 2016-10512, 2016-11622).

The Dallas Police Department (the "department") received four requests for information pertaining to a specified case. We understand the department will withhold social security numbers of living individuals under section 552.147(b) of the Government Code.¹ The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted representative sample of information.³

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²Although the department does not raise section 552.136 of the Government Code in your brief, we understand the department to claim this exception based on the department's markings in the submitted information.

³We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information consists of grand jury subpoenas and information obtained pursuant to grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). Thus, to the extent the department holds the information at issue as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the department is not required to release that information in response to the instant requests. To the extent the department does not hold the information at issue as an agent of the grand jury, we will address the department's arguments against its disclosure.

Next, we note, and the department acknowledges, it did not comply with section 552.301 of the Government Code in requesting a decision for the first three requests. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision Nos. 319 (1982), 586 (1991), 630 (1994). This office has held a compelling reason exists to withhold information when third-party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). We note section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, in failing to comply with section 552.301 in regard to the first three requests, the department has waived its argument under section 552.108. We note in waiving section 552.108 for the first three requests, the department has also waived this claim for this same information with respect to the fourth request. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Accordingly, the department may not withhold the submitted information on the basis of its own interest under section 552.108. However, the need of a governmental body other than the agency that is seeking an open records decision to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. *See* ORD 586 at 3. Because the department informs us, and provides documentation showing, the Dallas County District

Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the department may withhold the submitted information under section 552.108 on behalf of the district attorney's office. Further, because sections 552.101, 552.130, and 552.136 of the Government Code make information confidential, they can provide compelling reasons for non-disclosure and we will address the department's arguments under these exceptions.

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 information made confidential by section 261.201 of the Family Code, which provides, in relevant part, as follows:

(a) [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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted information consists of information used or developed in an investigation of alleged or suspected abuse or neglect under chapter 261 of the Family Code by the department. Accordingly, the submitted information 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); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code 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 we have no indication the department has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we conclude the submitted information is confidential pursuant to section 261.201(a) of the Family Code, and the department generally must withhold it under section 552.101 of the Government Code on that basis.

We note the submitted information includes a CR-3 accident report. Section 552.101 of the Government Code also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires

the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

Here, the first and second requestors are persons listed under section 550.065(c). Therefore, the first and second requestors have a right of access to the CR-3 accident report. Although the district attorney's office asserts section 552.108 to withhold the accident report, a statutory right of access prevails over the Act's general exceptions to public disclosure. *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). Because section 552.108 is a general exception under the Act, the first and second requestors' statutory access under section 550.065(c) prevails and the department may not withhold the accident report under section 552.108 of the Government Code.

However, the third and fourth requestors have not established they are persons listed under section 550.065(c). Thus, the submitted accident report is confidential with respect to the third and fourth requestors under section 550.065(b), and the department must withhold it under section 552.101 of the Government Code from the third and fourth requestors. However, section 550.065(c-1) requires the department to create a redacted accident report that may be requested by any person. *Traps. Code* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the third and fourth requestors have rights of access to the redacted accident report. Although the district attorney's office asserts section 552.108 to withhold the information, as noted above, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, ORDs 613 at 4, 451. Because section 552.108 is a general exception under the Act, the third and fourth requestors' statutory access under section 550.065(c-1) prevails and the department may not withhold the information under section 552.108 of the Government Code.

Nevertheless, there is a conflict between the confidentiality provided under section 261.201 of the Family Code and the rights of access provided under section 550.065(c) of the Transportation Code for the accident report and section 550.065(c-1) of the Transportation Code for the redacted accident report. 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*

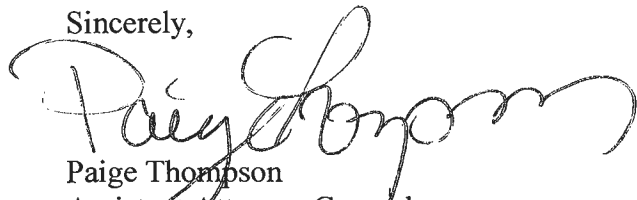
Lake Dallas v. Lake Cities Mun. Util. Auth., 555 S.W. 2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 261.201 generally pertains to all records of alleged child abuse or neglect, sections 550.065(c) and 550.065(c-1) specifically pertain to accident reports. Thus, we find section 550.065 is more specific than, and prevails over, section 261.201. Therefore, the department must release the accident report to the first and second requestors pursuant to section 550.065(c) of the Transportation Code and the redacted CR-3 accident report to the third and fourth requestors pursuant to section 550.065(c-1) of the Transportation Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴

In summary, to the extent the department holds the grand jury subpoenas and information obtained pursuant to the grand jury subpoenas as an agent of the grand jury, the department is not required to release that information in response to the instant requests. The department must release the CR-3 accident report to the first and second requestors pursuant to section 550.065(c) of the Transportation Code and the redacted CR-3 accident report to the third and fourth requestors pursuant to section 550.065(c-1) of the Transportation Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

⁴As our ruling is dispositive, we need not address the department's remaining argument against disclosure of this information.

Ref: ID# 622271

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)