



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2016

Ms. Susan Estringel
Legal Assistant
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2016-23247

Dear Ms. Estringel:

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# 636580 (DPS PIR# 16-5736).

The Texas Department of Public Safety (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in relevant part:

(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:

¹The 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).

(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). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *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(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated 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 department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, we note the submitted documents include the results of an analysis of a breath specimen. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person’s attorney. *See* Transp. Code § 724.018. In this instance, the person who provided the breath specimen at the request of a peace officer is the requestor. Accordingly, we find the requestor has a right of access to the information subject to section 724.018 of the Transportation Code, which we have marked.

Thus, although the remaining information is generally confidential under section 261.201(a) of the Family Code, section 724.018 provides the requestor with a right of access to the information pertaining to the analysis of the breath specimen obtained by a peace officer. Therefore, there is a conflict between the confidentiality provision of section 261.201(a) and the right of access provision of section 724.018. 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); *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 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, although section 261.201 of the Family Code generally makes records of alleged child abuse or neglect confidential, section 724.018 of the Transportation Code specifically permits release of information

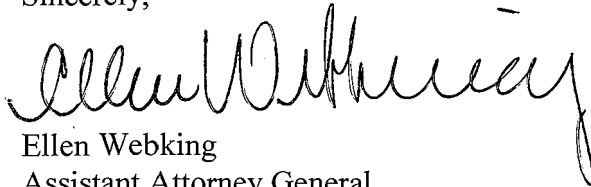
pertaining to the analysis of a breath specimen to certain parties. We therefore conclude the information pertaining to the analysis of a breath specimen may not be withheld from the requestor under section 261.201(a). We note although you also seek to withhold the information at issue under section 552.108 of the Government Code, a provision providing a specific right of access prevails over the exceptions to disclosure found in the Act. *See* ORD 451. Thus, the department must release the information pertaining to the analysis of a breath specimen, which we marked, to the requestor under section 724.018 of the Transportation Code.

In summary, the department must release to the requestor the information pertaining to the analysis of a breath specimen, which we marked, under section 724.018 of the Transportation Code.² The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

²We note the information being released in this instance is confidential with respect to the general public. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

³As our ruling is dispositive, we do not address your remaining arguments to withhold the information at issue.

Ref: ID# 636580

Enc. Submitted documents

c: Requestor
(w/o enclosures)