



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2016

Ms. Stacie S. White
Counsel for the City of Saginaw
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2016-26613

Dear Ms. White:

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# 636217.

The City of Saginaw (the "city"), which you represent, received a request for reports pertaining to a specified incident. Additionally, the city received a second request from a different requestor for all photographs, video, statements, and accident reconstruction data and diagrams pertaining to the same specified incident. You state the city will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ 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.

Initially, we note the first requestor only seeks reports pertaining to the specified incident. Accordingly, the remaining submitted information is not responsive to the first requestor's

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

request. Further, the second requestor only seeks photographs, video, statements, and accident reconstruction data and diagrams pertaining to the same specified incident. Therefore, the remaining submitted information, including the submitted reports, are not responsive to the second requestor's request for information because the second requestor did not ask for this type of information. The city need not release non-responsive information in response to either request.

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 of the Government Code encompasses section 261.201 of the Family Code, which states in relevant part:

(a) Except as provided by Section 261.203, the 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). We note the submitted information was used in an investigation of alleged child abuse conducted by the city's police department under chapter 261 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). You have not indicated the city has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, we find the submitted information is subject to chapter 261 of the Family Code and the city must withhold the responsive information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note the first requestor is the mother of the child victim at issue and is not alleged to have committed the abuse. Thus, the city may not use section 261.201(a) to withhold the responsive information from the first requestor. *See* Fam. Code § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider the applicability of other exceptions to disclosure for the responsive information as it pertains to the first requestor.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007. *Id.* § 58.007(c). The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

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

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c), (e). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information pertains to a juvenile suspect who was ten years of age or older and under seventeen years of age at the time of the incident at issue. Further, the report involves juvenile delinquent conduct that occurred after September 1, 1997. Therefore, the submitted information is generally confidential under section 58.007(c) of the Family Code.

We note, however, the responsive information includes a CR-3 accident report form. Section 550.065 of the Transportation Code 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. Transp. Code §§ 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 requestor is a person listed under section 550.065(c). Thus, although the submitted information is generally confidential under section 58.007(c) of the Family Code, section 550.065(c) requires the accident report to be released to this requestor. Therefore, we must address the conflict between the confidentiality provided under section 58.007(c) of the Family Code and the right of access provided under section 550.065(c) 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 58.007(c) generally pertains to all juvenile law enforcement records, section 550.065(c) specifically pertains to accident reports. Therefore, we find section 550.065 is more specific than, and prevails over, section 58.007(c). Therefore, in this instance, section 550.065(c) of the Transportation Code governs the release of the submitted accident report. Although you also seek to withhold the accident report form under section 552.108 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See 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 exceptions to disclosure under the Act). Accordingly, the city may not withhold the accident report form under section 552.108 of the Government Code and must release this report to the requestor pursuant to section 550.065(c) of the Transportation Code. The city must withhold the remaining responsive information from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, the city must withhold the responsive information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(k) of the Family Code. Regarding the first requestor, the city must release the CR-3 accident report form pursuant to section 550.065(c) of the Transportation Code and withhold the remaining responsive information under section 552.101 of the Government Code in conjunction with section 58.007(c) 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 636217

Enc. Submitted documents

c: Requestor
(w/o enclosures)