



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 9, 2017

Mr. Richard A. McCracken  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton, Third Floor  
Fort Worth, Texas 76102

OR2017-00595

Dear Mr. McCracken:

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# 640743 (PIR# W055913).

The City of Fort Worth (the "city") received a request for service calls pertaining to two named individuals for any location, including a specified address, for an over eighteen year time period. You state the city released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. This section 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). Upon review, we agree Exhibit D was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Accordingly, we find the information at issue is within the scope of section 261.201(a). Thus, this information is generally confidential under section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See id.* § 58.007(c). Section 58.007(c) reads as follows:

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
- (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). Upon review, we find Exhibits C1 through C16, as well as Exhibit D, involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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 when the conduct occurred), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, Exhibits C1 through C16, as well as Exhibit D, are generally confidential under section 58.007(c) of the Family Code.

However, we note the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services (“DFPS”) in accordance with chapter 42 of the Human Resources Code. Pursuant to rules promulgated by DFPS under

chapter 42 of the Human Resources Code, child-placing agencies are required to complete a foster home screening prior to verifying a foster home. *See* Hum. Res. Code § 42.042(a), (e), (f)-(g) (DFPS shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies, child-care services, licensed child-care facilities, and registered family homes). As part of the screening, the agency must obtain certain information as set forth at section 749.2447 of title 40 of the Texas Administrative Code. 40 T.A.C. §§ 749.2445(c)(1), .2471(1); *cf.* Hum. Res. Code § 42.0561 (providing in part that “[b]efore . . . a child-placing agency may issue a verification certificate for an agency foster home, the . . . child-placing agency must obtain information relating to each family violence report at the applicant’s residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by [DFPS].”). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information about a prospective foster home:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following*:

(A) *Obtain service call information from the appropriate law enforcement agency for the prospective foster parents’ addresses for the past two years.* Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

...

(C) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

40 T.A.C. § 749.2447(7)(A), (C) (emphasis added); *see id.* § 749.2445(a); *see id.* §§ 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, section 749.2447(7) of title 40 of the Texas Administrative Code requires a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of prospective foster parents from appropriate law enforcement agencies. *See id.* § 749.2447(7). Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a prospective foster home pursuant to the requirements of section 749.2445.

While the requestor may generally have a right of access to some of the requested information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code, we note Exhibits C1 through C13 fall outside of the two year period to which section 749.2447(7) grants access. *See id.* § 749.2447(7)(A), (C). Therefore, the requestor does not have a right of access to Exhibits C1 through C13 pursuant to section 749.2447(7). Thus, the city must withhold Exhibits C1 through C13 in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Government Code.

In this instance, the requestor is seeking police reports that may pertain to a prospective foster parent's address. Although the requestor is seeking the submitted information as the representative of a child-placing agency, because we cannot determine whether the requestor is seeking access pursuant to section 749.2447(7) of the Texas Administrative Code, we must rule conditionally. Therefore, if the submitted information does not pertain to a current or prospective foster parent's address, we conclude the requestor does not have a right of access to the information at issue pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. In that instance, the sheriff's office must additionally withhold Exhibits C14 through C16, as well as Exhibit D, in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, if the information pertains to a current or prospective foster parent's address, we conclude the requestor generally has a right of access to Exhibits C14 through C16, as well as Exhibit D, pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. We note section 261.201 of the Family Code provides information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." Fam. Code § 261.201(a). Section 749.2447(7) of title 40 of the Texas Administrative Code constitutes such "applicable state law." However, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provided under sections 58.007(c) of the Family Code. With regard to section 58.007, where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See Gov't Code* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevails); *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). While section 58.007(c) generally makes juvenile law enforcement records confidential with respect to the general public, section 749.2447(7) requires release of information for a specified address and time period to a specified type of requestor in a certain circumstance—a child-placing agency verifying a foster home at that address. *See Fam. Code* § 58.007(c); 40 T.A.C. §§ 749.2447(7), .2471. Thus, the statutory right of access granted to the requestor by section 749.2447(7) of title 40 of the Texas Administrative Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Consequently, the city may not withhold Exhibits C14 through C16, or Exhibit D under section 552.101 in conjunction with section 58.007(c) of the Family Code. We also note a specific statutory right of access overcomes general exceptions to disclosure in the Act and the common law. *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 statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in 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 information in Exhibits C14 through C16, or Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.147 of the Government Code.

To the extent the information pertains to a current or prospective foster parent's address, we note portions of the information to which the requestor has a right of access are subject to section 552.130 of the Government Code. Section 552.130 of the Government Code 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. *See* Gov't Code § 552.130(a). Upon review, we find some of the submitted information consists of motor vehicle record information for purposes of section 552.130. Accordingly, the motor vehicle record information we marked is generally confidential under section 552.130 of the Government Code.

However, as previously discussed, the requestor may have a statutory right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. However, because section 552.130 of the Government Code has its own access provisions, section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provided under section 552.130 of the Government Code. Although section 749.2447(7) generally allows a child-placing agency access to service call information, section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than the right of access provided by section 749.2447(7). Accordingly, we conclude, notwithstanding the possible statutory right of access granted to the requestor by section 749.2447(7) of title 40 of the Texas Administrative Code, the city must withhold the motor vehicle record information in the information at issue under section 552.130 of the Government Code.


In summary, the city must withhold Exhibits C1 through C13 in their entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Government Code. If the submitted information does not pertain to a current or prospective foster parent's address, the city must additionally withhold Exhibits C14 through C16, as well as Exhibit D, in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the submitted information does

pertain to a current or prospective foster parent's address, then the city must release the information in Exhibits C14 through C16, as well as Exhibit D to the requestor.<sup>1</sup> However, in releasing this information, the city must withhold the marked motor vehicle record information under section 552.130 of the Government 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](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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/bw

Ref: ID# 640743

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>Because the requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor. See 40 T.A.C. § 749.2447(7).