



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2017

Mr. Josh Marcum
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2017-00677

Dear Mr. Marcum:

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# 640850 (PIR No. W055955).

The City of Fort Worth (the "city") received a request for all service calls made to a specified address. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

The submitted information indicates the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family and Protective Services ("DFPS") in accordance with chapter 42 of the Human Resources Code, and the residents of the specified address are prospective foster parents. *See generally* Hum. Res. Code ch. 42. Pursuant to rules promulgated by the executive commissioner of the Health and Human Services Commission (the "executive commissioner") 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) (executive commissioner shall make rules to carry out provisions of chapter 42, including minimum

¹Although you do not raise section 552.130 in your brief, we understand you to raise this section based on your markings in the submitted information.

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 the department.”). 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); *see id.* § 749.2445(a); *see also 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.

In this instance, the requestor is seeking all service calls involving a prospective foster parent at the residence for the previous two years. Accordingly, we conclude the requestor has a right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. Although you raise section 552.101 of the Government Code

in conjunction with common-law privacy, we note a specific statutory right of access prevails over the 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 statute directly conflicts with common law principle). Therefore, the city may not withhold the submitted information on the basis of common-law privacy.

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 agree the information you have marked, in addition to the information we have marked, consists of motor vehicle record information for purposes of section 552.130. Accordingly, the marked motor vehicle record information is generally confidential under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. A statutory right of access generally prevails over the Act's general exceptions to disclosure. *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 exception to disclosure under the Act). 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. Where information falls within both a general and specific provision of law, the specific provision prevails over the general. *See Gov't Code* § 311.026; *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). 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, notwithstanding the 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 marked motor vehicle record information under section 552.130 of the Government Code.

In summary, the city must withhold the marked motor vehicle record information under section 552.130 of the Government Code. The city must release the remaining information to this requestor pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code.²

²Because 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.

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 Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 640850

Enc. Submitted documents

c: Requestor
(w/o enclosures)