



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2017

Mr. M. Matthew Ribitzki
Deputy City Attorney
City of Burleson
141 West Renfro
Burleson, Texas 76028

OR2017-02006

Dear Mr. Ribitzki:

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# 648183 (ORR No. 264/16-0772).

The Burleson Police Department (the "department") received a request for information pertaining to a specified address. The department states it will withhold motor vehicle record information under section 552.130(c) of the Government Code.¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the department has redacted dates of birth. Open Records Letter No. 2016-08169 (2016) authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). However, one of these redacted dates of birth pertains to the requestor, who has a right of access to her private information pursuant to

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Open Records Letter No. 2016-08169 does not authorize the department to withhold a date of birth to which a person or a person's authorized representative has a special right of access under section 552.023. Therefore, the department may not withhold the requestor's date of birth on that ground.

Next, we note Exhibit B contains court-filed documents that are subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Although the department asserts the information subject to section 552.022(a)(17) is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the information subject to section 552.022(a)(17) under section 552.108. In addition, common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). However, section 552.101 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of this section to the information at issue.

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 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* Fam. Code § 58.007(c). Section 58.007 provides, in relevant part, the following:

(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

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

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

Id. § 58.007(c), (e), (j). Upon review, we find Exhibit C involves 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 person who is ten years of age or older and under seventeen years of age when conduct occurred), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Therefore, this information is confidential under section 58.007(c) of the Family Code. The department acknowledges the requestor is a parent of the juvenile offender at issue. Accordingly, the department may not withhold the information at issue under section 552.101 of the Government Code on that ground. *See id.* § 58.007(e). Nevertheless, section 58.007(j)(1)

provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the parent's child must be redacted. *See id.* § 58.007(j)(1). We are unable to determine the age of the witnesses in Exhibit C. Thus, we must rule conditionally. To the extent the information we have marked in Exhibit C pertains to witnesses who were under eighteen years of age when the conduct occurred, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. To the extent this information does not pertain to witnesses who were under eighteen years of age when the conduct occurred, the department may not withhold the information on that ground.

Section 552.101 of the Government Code also encompasses 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 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[.]

Id. § 261.201(a), (k), (l)(2). Upon review, we find police report numbers 16-003874 and 16-003163 were used or developed in investigations 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). Thus, this information is within the scope of section 261.201(a). The requestor is a parent of the child victims in both reports. This individual is not alleged to have committed the suspected abuse or neglect in police report number 16-003874. Thus, the department may not withhold this report from the requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) provides any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we must address the department’s argument to withhold the remaining information in this report under section 552.108(a)(1) of the Government Code. Nevertheless, the requestor was suspected of committing the alleged or suspected abuse in police report number 16-003163. Accordingly, the requestor does not have a right of access to this information under section 261.201(k). *See id.* §261.201(k). Thus, the department must generally withhold this report under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note police report number 16-003163 includes blood test results that the requestor provided at the request of a peace officer. Section 724.018 of the Transportation Code provides, 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. Therefore, the requestor has a right of access to the information subject to section 724.018 of the Transportation Code.

In addition, this report contains the requestor’s fingerprints. Chapter 560 of the Government Code provides a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). However, the requestor has a special right of access to her own fingerprint information. *See id.* § 560.002(1).

Consequently, there is a conflict between the confidentiality provided under section 261.201(a) of the Family Code and the access provided under section 724.018 of the Transportation Code and section 560.002 of the Government 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.). Section 261.201(a) of the Family Code generally makes records of alleged child abuse or neglect confidential. However, section 724.018 of the Transportation Code specifically permits release of information pertaining to the analysis of a blood specimen to certain parties, and section 560.002 of the Government Code applies specifically to biometric identifier information. Accordingly, we find the right of access provided to this requestor under section 724.018 of the Transportation Code and 560.002 of the Government Code prevails over the general confidentiality of section 261.201 of the Family Code. Therefore, the city may not withhold the information pertaining to the analysis of the requestor's blood specimen or fingerprints under section 261.201(a). Although the department asserts this information is also excepted from disclosure under section 552.108 of the Government Code, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the department must release from police report number 16-003163 the information pertaining to the analysis of the requestor's blood specimen under section 724.018 of the Transportation Code and her fingerprints pursuant to section 560.002 of the Government Code, but must withhold the remaining information in this report under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

The department asserts the remaining information in police report number 16-003874 is excepted from release under section 552.108(a) of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The department states the remaining information in police report number 16-003874 relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975)

²As our ruling is dispositive, we do not address the other arguments of the department to withhold this information.

(delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the remaining information in police report number 16-003874 under section 552.108(a)(1) of the Government Code.³

The information subject to section 552.022(a)(17) of the Government Code in police report number 16-003874, which we have marked, contains fingerprints. Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which, as discussed in part above, provides a governmental body may not release fingerprint information except in certain limited circumstances. See *id.* §§ 560.001, .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

To conclude, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code in Exhibit C if it pertains to witnesses who were under eighteen years of age when the conduct occurred. The department must release from police report number 16-003163 the information pertaining to the analysis of the requestor's blood specimen under section 724.018 of the Transportation Code and her fingerprints pursuant to section 560.002 of the Government Code, but must withhold the remaining information in this report under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of the information we have marked under section 552.022(a)(17) of the Government Code and basic information, which the department must release, the department may withhold police report number 16-003874 under section 552.108(a)(1) of the Government Code. However, in releasing the information we have marked in this report under section 552.022(a)(17) of the Government Code, the department must withhold the information we have marked under section 552.101 of the

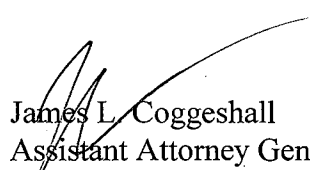
³We note the basic information contains the arrestee's social security number. See ORD 127 at 4. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

Government Code in conjunction with section 560.003 of the Government Code. The department must release the remaining information.⁴

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 648183

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.