



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 17, 2017

Ms. Kerry G. Tilley
Assistant City Attorney
City of Amarillo
200 S.E. Third Avenue
Amarillo, Texas 79101

OR2017-03642

Dear Ms. Tilley:

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# 646270 (ORR Nos. 16-2927 & 16-3101).

The Amarillo Police Department (the “department”) received a request for case number 2016-0519160. A second request from a different requestor seeks photographs related to case number 2016-0519160. 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 representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

- (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *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, we find this information is subject to chapter 261 of the Family Code. You state the department has not adopted a rule that governs the release of this type of information. Therefore, we conclude the department must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, you inform us the second requestor is a Child Care Licensing Investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) provides “[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare shall be referred immediately to [DFPS].” *See* Fam. Code § 261.105(a). In this instance, the submitted information reveals the person suspected of child abuse or neglect was responsible for the child’s care, custody, or welfare at the time of the incident in question. *See id.* § 261.001(5)(E) (person responsible for child’s care, custody, or welfare includes personnel at private child-care facility that provides services for the child). Accordingly, section 261.105(a) is applicable with respect to the DFPS requestor, and the confidentiality of section 261.201(a) does not apply to make the information sought by this requestor confidential. *See* Attorney General Opinion No. GA-0879 (2011) (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child’s care, custody, or welfare to DFPS). Although you claim the information sought by the second requestor is excepted from disclosure under section 552.108 of the Government Code, a statute governing the release of specific information prevails over the general exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 3 (1992); Open Records Decision Nos. 613 at 4 (1993)

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information with respect to the first requestor.

(exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome Act's general exceptions to disclosure). Therefore, the department may not withhold the submitted photographs from the DFPS requestor under section 552.108 of the Government Code. However, we note portions of the submitted photographs are subject to section 552.130 of the Government Code.³ Accordingly, we will address the applicability of this exception to disclosure of the information at issue.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Some of the submitted photographs contain motor vehicle record information that is generally confidential under section 552.130 of the Government Code.

As previously noted, the second requestor has a right of access to the information at issue under section 261.105(a). We note 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, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 261.105 of the Family Code and the confidentiality provided by section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See 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 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 261.105(a) generally allows DFPS access to reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare, section 552.130 specifically protects motor vehicle record information. We therefore conclude section 261.105(a) does not provide DFPS access to information subject to section 552.130. Thus, notwithstanding the provision of section 261.105(a) of the Family Code, the department must withhold the motor vehicle record information within the submitted photographs under section 552.130 of the Government Code. The department must release the remainder of the submitted photographs to the second requestor pursuant to section 261.105 of the Family Code.

In summary, the department must withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the motor vehicle record information within the submitted photographs under section 552.130 of the Government Code and must release

³The 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).

the remainder of the submitted photographs to the second requestor pursuant to section 261.105 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 646270

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)