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ATTORNEY GENERAL OF TEXAS

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OR2017-05900

Dear Ms. Velasquez:

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# 649760 (CPS 16-55).

The Watauga Police Department (the "department"), which you represent, received a request for information pertaining to three named individuals within a specified time frame. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 information protected by other statutes, such as 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 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). Incident report numbers 16W25045 and 16W25027 were used or developed in investigations of alleged or suspected child abuse or neglect. *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). Thus, incident report numbers 16W25045 and 16W25027 are subject to section 261.201 of the Family Code. In this instance, however, the requestor is a representative of 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 id.* § 261.105(a). In this instance, the suspect of child abuse or neglect in incident report numbers 16W25045 and 16W25027 is the mother of the alleged child victim, and, therefore, responsible for the child’s care, custody, or welfare. Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply. Although you claim portions of incident report numbers 16W25045 and 16W25027 are excepted under section 552.101 of the Government Code in conjunction with common-law privacy, a specific statutory right of access prevails over 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). Thus, the department generally must release incident report numbers 16W25045 and 16W25027 to this requestor pursuant to section 261.105(a).

Additionally, incident report numbers 16W34623 and 16W04125 were also used or developed in investigations of alleged child abuse conducted by the department and subject to section 261.201 of the Family Code. In these incident reports, the suspect of child abuse is not responsible for the child victim’s care, custody, or welfare; therefore, section 261.105(a) of the Family Code is not applicable. *See* Fam. Code § 261.105(a). Accordingly, the department must withhold incident report numbers 16W34623 and 16W04125 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

¹As our ruling is dispositive for this information, we do not address your remaining argument against its disclosure. Further, we note because incident report numbers 16W34623 and 16W04125 do not contain criminal history record information (“CHRI”) for the individuals named in the request, we do not address whether the requestor has a right of access to CHRI under section 411.114 of the Government Code. *See* Gov’t Code § 411.114(4)(B).

Section 552.101 also encompasses section 58.007 of the Family Code, which provides in relevant part:

(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.

Id. § 58.007(c). Section 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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). Incident report number 16W23098 involves an allegation of juvenile conduct indicating a need for supervision that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the department must generally withhold incident report number 16W23098 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Further, incident report number 16W35485 involves an allegation of delinquent conduct. However, we are unable to determine the age of some of the alleged offenders in incident report number 16W35485. Thus, we must rule conditionally. If any of the offenders were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the department must withhold incident report number 16W35485 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.² If none of the offenders were ten years of age or older and under seventeen years of age at the time of the conduct at issue, section 58.007(c) of the Family Code does not apply to incident report number 16W35485, and the department may not withhold this information under section 552.101 on that basis.

²We note because incident report number 16W35485 does not contain CHRI for the individuals named in the request, we do not address whether the requestor has a right of access to CHRI under section 411.114 of the Government Code. *See Gov’t Code* § 411.114(4)(B).

In that case, we will consider whether any portion of incident report number 16W35485 is excepted from disclosure.

As noted above, the requestor in this instance is a representative of DFPS and is requesting information on the juvenile offender in incident report number 16W23098. Section 411.114(a) of the Government Code states, in pertinent part:

(2) [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] [CHRI] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

(4) Subject to Section 411.087, [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov’t Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, these provisions may grant the DFPS investigator a right of access to CHRI in incident report number 16W23098. In this case, the requestor is an investigator with the Child Protective Services division of DFPS but does not specifically state whether the named individual who is the subject of incident report number 16W23098 is an alleged perpetrator in a DFPS report of abuse or neglect of a child. Thus, we are unable to conclude section 411.114 of the Government Code gives the requestor a right of access to the CHRI in incident report number 16W23098, and we must rule conditionally. Therefore, if the requestor is not investigating the named individual at issue as an alleged perpetrator in a DFPS report of abuse or neglect of a child, the CHRI is not subject to release to this requestor under

section 411.114, and incident report number 16W23098 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the requestor is investigating the named individual at issue as an alleged perpetrator in a DFPS report of abuse or neglect of a child, then the requestor has a right of access under section 411.114 of the Government Code to the CHRI in incident report number 16W23098. In that instance, we must address the conflict between section 58.007(c) of the Family Code and section 411.114 of the Government Code.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *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). In this instance, while section 58.007(c) generally makes juvenile law enforcement records confidential, section 411.114 of the Government Code gives one specific requestor, the DFPS, access to particular information, CHRI, found in records involving particular individuals, alleged perpetrators in a DFPS report of abuse or neglect of a child. *See Gov't Code* § 411.114; *Fam. Code* § 58.007. Thus, the statutory right of access granted to the DFPS by section 411.114 of the Government Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Therefore, if the department determines the subject individual in incident report number 16W23098 is an alleged perpetrator in a DFPS report of abuse or neglect of a child, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The department must withhold the rest of incident report number 16W23098 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, incident report number 16W32934 contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the report from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must

withhold incident report number 16W32934 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.³

Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.⁴ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Upon review, we find portions of incident report number 16W35485 meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, to the extent incident report number 16W35485 is not withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with 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.⁵ *See* Gov't Code § 552.130(a). Upon review, we find portions of incident report numbers 16W25045, 16W25027, and 16W35485 consist of motor vehicle record information. As noted above, if incident report number 16W35485 is not withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. Additionally, the department must generally withhold the motor vehicle record information we marked in incident report numbers 16W25045 and 16W25027 under section 552.130 of the Government Code.

³We note because the information at issue does not contain CHRI for the individuals named in the request, we do not address whether the requestor has a right of access to CHRI under section 411.114 of the Government Code. *See* Gov't Code § 411.114(4)(B).

⁴Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

⁵The 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).

As previously noted, the requestor has a right of access to incident report numbers 16W25045 and 16W25027 under section 261.105(a) of the Family Code. We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993), 451 at 4 (1986). However, because section 552.130 of the Government Code has its own access provisions, we conclude section 552.130 of the Government Code 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. As noted above, where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Cuellar*, 521 S.W.2d at 277. Although section 261.105(a) of the Family Code 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 of the Government Code 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 section 261.105(a) of the Family Code, the department must withhold the motor vehicle record information we marked in incident report numbers 16W25045 and 16W25027 under section 552.130 of the Government Code.

In summary, the department must withhold incident report numbers 16W34623 and 16W04125 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If any of the offenders were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the department must withhold incident report number 16W35485 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If none of the offenders in incident report number 16W35485 were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the department must withhold the information we marked in incident report number 16W35485 under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. If the requestor is not investigating the named individual at issue in incident report number 16W23098 as an alleged perpetrator in a DFPS report of abuse or neglect of a child, incident report number 16W23098 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the requestor is investigating the named individual at issue in incident report number 16W23098 as an alleged perpetrator in a DFPS report of abuse or neglect of a child, then the department must release CHRI to the requestor and withhold the remaining information in incident report number 16W23098 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold incident report number 16W32934 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked in incident report numbers 16W25045 and 16W25027 under section 552.130 of the Government Code. The department must release the remaining information.

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,



Emily Buchanan
Assistant Attorney General
Open Records Division

EB/eb

Ref: ID# 649760

Enc. Submitted documents

c: Requestor
(w/o enclosures)