



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 24, 2017

Ms. Albesa Elias Calles  
Custodian of Records  
Brownsville Police Department  
600 East Jackson Street  
Brownsville, Texas 78520

OR2017-11388

Dear Ms. Calles:

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# 659228.

The Brownsville Police Department (the "department") received a request for information pertaining to the requestor's client, including specified cases. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> 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. Section 552.101 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 purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

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<sup>1</sup>Although you do not explicitly raise section 552.101 of the Government Code, we understand you to raise this exception based on the substance of your argument.

(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 find the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261 of the Family Code 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). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, some of the submitted information is subject to article 2.139 of the Code of Criminal Procedure, which provides:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

(1) the stop;

(2) the arrest;

(3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or

(4) a procedure in which a specimen of the person’s breath or blood is taken.

Crim. Proc. Code art. 2.139. The submitted information includes video recordings made by or at the direction of an officer employed by the department that contain footage of the requestor’s client being stopped or arrested on suspicion of an offense under section 49.045 of the Penal Code. *See* Penal Code § 49.045 (driving while intoxicated with a child

passenger). Therefore, the requestor is entitled to receive a copy of portions of these video recordings pursuant to article 2.139.

However, there is a conflict between the confidentiality provided under section 261.201(a) of the Family Code and the right of access provided under article 2.139 of the Code of Criminal Procedure for the portions of the video recordings at issue. 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); *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 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 261.201(a) generally pertains to all records of alleged or suspected child abuse or neglect, article 2.139 specifically pertains to video recordings pertaining to stops or arrests on suspected violations of sections 49.04, 49.045, 49.07, and 49.08 of the Penal Code. Therefore, we find article 2.139 is more specific than, and prevails over, section 261.201. Additionally, we note article 2.139 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Thus, the department must release the portions of the submitted video recordings we indicated pursuant to article 2.139 of the Code of Criminal Procedure. However, the department must generally withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

We note the remaining information includes the fingerprints of the requestor's client. Section 560.003 of the Government Code provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 of the Government Code provides, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, we find a person or the person's authorized representative has a right of access under section 560.002(1)(A) to that person's biometric information. In this instance, the requestor has a right of access to his client's fingerprints pursuant to section 560.002(1)(A). Thus, there is a conflict between the confidentiality mandated under section 261.201 of the Family Code and the right of access provided to this requestor under section 560.002 of the Government Code.

As previously noted, where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See id.* § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util.*

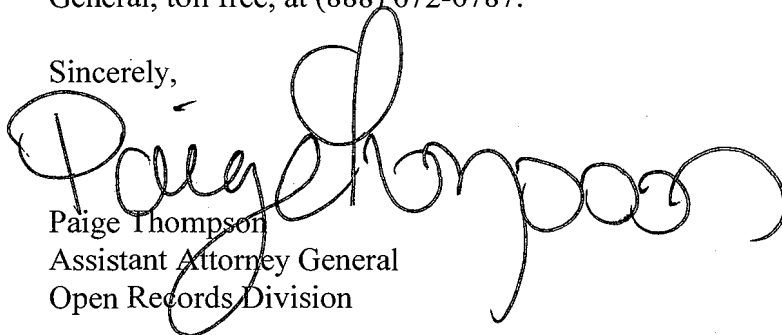
*Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). As previously noted, we find section 261.201 of the Family Code generally applies to information used or developed in an investigation of alleged child abuse or child neglect. Section 560.002, however, applies specifically to biometric identifier information. Accordingly, we find the right of access provided to this requestor under section 560.002 prevails over the general confidentiality of section 261.201 of the Family Code. Thus, the department must release the fingerprints belonging to the requestor's client to this requestor pursuant to section 560.002. With the exception of the fingerprints at issue, which must be released to this requestor pursuant to section 560.002 of the Government Code, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, the department must release the portions of the submitted video recordings we indicated pursuant to article 2.139 of the Code of Criminal Procedure and the fingerprints belonging to the requestor's client pursuant to section 560.002 of the Government Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup>

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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/tdw

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<sup>2</sup>Because the requestor has a special right of access to 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.

Ref: ID# 659228

Enc. Submitted documents

c: Requestor  
(w/o enclosures)