



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2017

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2017-12535

Dear Mr. Benton:

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# 660976 (City Ref # LGL-17-031).

The City of Waco (the "city") received a request for three specified incident reports. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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."

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.

Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed by the city's police department in investigations of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201 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) (defining "abuse" for purposes of chapter 261 of the Family Code). Therefore, we find the submitted information is generally confidential pursuant to section 261.201 of the Family Code. However, section 261.201(a) provides information encompassed by that section may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law[.]" *Id.* § 261.201(a). Section 264.509(b) of the Family Code constitutes applicable state law for purposes of section 261.201(a); thus, we address it.

The requestor states she is requesting the submitted information on behalf of the Heart of Texas Child Fatality Review Team. Subchapter F of chapter 264 of the Family Code relates to child fatality review and investigation. *See id.* §§ 264.501 *et seq.* The purpose and duties of a child fatality review team include "decreas[ing] the incidence of preventable child deaths by . . . developing an understanding of the causes and incidence of child deaths in the county or counties in which the review team is located[.]" *Id.* § 264.506(a)(3). A child fatality review team is required to "meet on a regular basis to review child fatality cases and recommend methods to improve coordination of services and investigations between agencies that are represented on the team[.]" *Id.* § 264.506(b)(2). Furthermore, section 264.508 provides "[t]he review team of the county in which the injury, illness, or event that was the cause of the death of the child occurred, as stated on the child's death certificate, shall review the death." *Id.* § 264.508(a). Section 264.509 provides in relevant part:

(a) A review team may request information and records regarding a deceased child as necessary to carry out the review team's purpose and duties. Records and information that may be requested under this section include:

- (1) medical, dental, and mental health care information; and
- (2) information and records maintained by any state or local government agency, including:
 - (A) a birth certificate;
 - (B) law enforcement investigative data;
 - (C) medical examiner investigative data;
 - (D) juvenile court records;
 - (E) parole and probation information and records; and
 - (F) child protective services information and records.

(b) On request of the presiding officer of a review team, the custodian of the relevant information and records relating to a deceased child shall provide those records to the review team at no cost to the review team.

Id. § 264.509(a), (b). The submitted information consists of law enforcement investigative data relating to investigations of the deaths of three children. Section 264.509(a) provides that a child fatality review team shall have access to law enforcement investigative data as necessary to conduct its duties. Section 264.509(b) states that, upon request of the presiding officer of the review team, the custodian of the "relevant information and records" shall provide the records to the review team. We are unable to determine if the requestor is the presiding officer of the child fatality review team; thus, we rule conditionally. To the extent the requestor is not the presiding officer of the child fatality review team, she does not have a right of access under section 264.509(b) and the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the requestor is the presiding officer of the child fatality review team, she has a right of access to the submitted information under section 264.509(b) of the Family Code. In that instance, we find the release of the submitted information is consistent with the Family Code for the purposes of section 261.201(a) and the city generally must release the submitted information to this requestor pursuant to section 264.509(b) of the Family Code. *See id.* § 261.201(a). Although the city seeks to withhold some of the information at issue under section 552.101 in conjunction with common-law privacy, a statutory right of access generally prevails over the common law.

Center Point 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); Attorney General Opinion GA-0290 at 4 (2005) (noting valid rules of administrative agencies have the same “force and effect of legislation”). Further, although the city also seeks to withhold some of the information at issue under sections 552.108 and 552.147 of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See* Open Records Decision Nos. 613 at 4 (1993); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

You also seek to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and under section 552.130 of the Government Code. Section 552.101 of the Government Code also encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find the city generally must withhold the CHRI you marked under section 552.101 in conjunction with section 411.083 of the Government Code.

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 id.* § 552.130. Accordingly, with the exception of the information we marked for release, we find city must generally withhold the information you marked and the additional information we marked under section 552.130 of the Government Code.

Thus, there is a conflict between the confidentiality provided by sections 411.083 and 552.130 of the Government Code and the right of access provided by section 264.509(b) of the Family Code. As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. We conclude, 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. *See* Gov't Code § 552.130(b) (information described by section 552.130(a) may only be released in manner authorized by chapter 730 of Transportation Code). Where information falls within both general and specific statutory provisions, the specific provision 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); *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). Section 264.509(b) generally provides a child fatality review team access to information and records regarding a deceased child. *See* Fam. Code § 264.509(b). However, section 411.083 specifically makes CHRI generated by TCIC or NCIC confidential and section 552.130 specifically protects motor vehicle record information. *See* Gov't Code §§ 411.083(a), 552.130. Thus, we find sections 411.083 and 552.130 of the Government Code are more specific than the general right of access provided by section 264.509(b) of the Family Code. We therefore conclude, notwithstanding the statutory right of access provided by section 264.509(b) of the Family Code, (1) the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; and (2) with the exception of the information we marked for release, the city must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code.

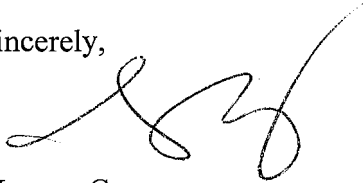
In summary, if the requestor is not the presiding officer of the child fatality review team, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the presiding officer of the child fatality review team, then (1) the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) with the exception of the information we marked for release, the city must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code; and (3) the city 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,



Meagan Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 660976

Enc. Submitted documents

c: Requestor
(w/o enclosures)