



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 17, 2017

Ms. Sylvia Porter  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio Avenue, Room 503  
El Paso, Texas 79901

OR2017-15928

Dear Ms. Porter:

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# 666433 (County File No. OP-17-150).

The El Paso County District Attorney's Office (the "district attorney's office") received a request for all information related to two specified cause numbers. You state the district attorney's office will withhold information under section 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

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<sup>1</sup>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. *See* Gov't Code § 552.147(b).

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 a portion of the submitted information pertains to an investigation 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). Accordingly, we find this information is subject to section 261.201 of the Family Code. There is no indication the district attorney’s office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the district attorney’s office must generally withhold the information we have marked 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).* However, we find none of the remaining information is confidential under section 261.201 of the Family Code and none of it may be withheld under section 552.101 of the Government Code on that basis.

We note the information we have marked, along with additional portions of the submitted information, contains the fingerprints of the requestor’s client. 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 his client’s 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 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 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.).

Section 261.201(a) of the Family Code generally makes records of alleged child abuse or neglect confidential. However, 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 560.002 of the Government Code prevails over the general confidentiality of section 261.201(a) of the Family Code. Although you assert this information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code, the general exceptions to disclosure found in the Act, such as sections 552.108 and 552.111, cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1999), 451 at 4 (1986). Thus, the district attorney's office must release the fingerprints of the requestor's client pursuant to section 560.002 of the Government Code, but must withhold the remaining information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information relates to closed criminal cases that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* at 3-4. Thus, with the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.<sup>3</sup>

You inform us the requestor is an authorized representative of the individual at issue in the submitted information. Section 552.023 provides that a person or a person's authorized

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023(a). However, the release of information made confidential by section 261.201 of the Family Code is governed by the provisions of the Family Code, not by section 552.023 of the Government Code. Furthermore, section 552.023 does not apply where interests other than the person's privacy are being protected. *See* Open Records Decision No. 565 (1990) (provisions of Medical Practices Act making medical records confidential are intended to protect more than just the privacy interests of the patient). In this instance, the remaining information may be withheld under section 552.108 of the Government Code, which protects law enforcement interests rather than privacy rights. Therefore, section 552.023 does not apply, and the requestor does not have a special right of access to the information subject to section 552.108.

In summary, the district attorney's office must release the fingerprints of the requestor's client pursuant to section 560.002 of the Government Code. The district attorney's office must withhold the remaining information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(2) of the Government 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 666433

Enc. Submitted documents

c: Requestor  
(w/o enclosures)