



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2017

Ms. Andrea D. Russell
Counsel for the City of Cleburne
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2017-16030

Dear Ms. Russell:

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# 666352.

The Cleburne Police Department (the "department"), which you represent, received a request for all records involving a named individual, including a specified police report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 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). Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code), 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. We have no indication the department 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 information we have marked is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, section 261.201(a) provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a).

We note the requestor identifies herself as an investigator for the Texas Medical Board (the “board”). Section 153.006(a) of the Occupations Code, which constitutes applicable state law, provides that “[t]he board may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant.” Occ. Code § 153.006(a). In this instance, the board seeks access to criminal records pertaining to a license holder. If you determine that release of the information at issue would not be for purposes consistent with the Family Code, then the board does not have a right of access to the information we have marked and it must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code.¹ However, if you determine that release of the information at issue would be for purposes consistent with the Family Code, then you must release the information we have marked to the board pursuant to section 153.006(a). You claim the remaining information is excepted from disclosure under the doctrine of common-law privacy. We note the board’s statutory right of access to a license holder’s criminal records under section 153.006 prevails over common-law privacy. *See 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). Accordingly, the department may not withhold any of the submitted information on the basis of section 552.101 in conjunction with common-law privacy. However, you marked a portion of the submitted information under section 552.130 of the Government Code. Accordingly, we will address this exception to disclosure.

¹In this event, as our ruling is dispositive, we need not address your argument against its disclosure.

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* Gov't Code § 552.130. Upon review, we agree the motor vehicle record information you have marked is generally confidential under section 552.130 of the Government Code. Although a statutory right of access generally prevails of the Act's general exceptions to disclosure, we note section 552.130 is not a general exception under the Act because it has its own access provisions. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).

Thus, there is a conflict between the confidentiality provided by section 552.130 of the Government Code and the requestor's potential right of access provided by section 153.006 of the Occupations 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 that the legislature intended the general provision to prevail. *See* Gov't Code § 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.). Although section 153.006 generally provides the board access to criminal record reports regarding a license holder or license applicant, section 552.130 of the Government Code specifically protects motor vehicle record information. Furthermore, section 552.130 of the Government Code was enacted later than section 153.006. *See* Act of Aug. 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7, 31 (enacting statutory predecessor to section 153.006); Act of June 20, 1997, 75th Leg., R.S., ch. 1187 § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting section 552.130). We therefore conclude the confidentiality provided by section 552.130 is more specific than the general right of access provided under section 153.006. Accordingly, notwithstanding section 153.006, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, if you determine that release of the information at issue would not be for purposes consistent with the Family Code, then the board does not have a right of access to the information we have marked and it must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. However, if you determine that release of the information at issue would be for purposes consistent with the Family Code, then the department must release the information we have marked to the board pursuant to section 153.006(a) of the Occupations Code. The department must release the remaining information to this requestor pursuant to section 153.006(a) of the Occupations Code; however, in releasing the remaining information, the department must withhold the motor

vehicle record information you have marked under section 552.130 of the Government Code.²

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 666352

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Should the department receive another request for this same information from a person who would not have a right of access to the information, the department must request another decision from this office. See Gov't Code §§ 552.301(a), .302.