



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 2, 2017

Mr. Matthew Murray  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102-6311

OR2017-17357

Dear Mr. Murray:

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# 668858 (PIR No. W061967).

The City of Fort Worth (the "city") received a request for police records or reports pertaining to two named individuals. You claim the submitted information is 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. Section 552.101 encompasses section 58.007 of the Family Code, which provides, in 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.

Fam. Code § 58.007(c); *see id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find incident report number 09-38743 involves a juvenile offender, so as to fall within the scope of section 58.007(c). We have no indication any of the exceptions in section 58.007 apply. Thus, the city must withhold incident report number 09-38743 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>1</sup>

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he 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.

*Id.* § 261.201(a). Upon review, we find incident report number 16-92058 was used or developed in an investigation conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of

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<sup>1</sup>We note that although the requestor is a representative of Child Protective Services (“CPS”), incident report number 09-38743 does not contain criminal history record information (“CHRI”) for the individuals named in the request; therefore, we do not address whether the requestor has a right of access to this information.

section 261.201 of Family Code). You have not indicated the city has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude incident report number 16-92058 is generally confidential under section 261.201 of the Family Code.

We note the requestor is a representative 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 information at issue indicates the person suspected of child abuse was responsible for the child’s care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child’s care, custody, or welfare includes a member of the child’s family or household as defined by chapter 71 of the Family Code); *see also id.* § 71.005 (household is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply in this instance. *See* Attorney General Opinion No. GA-0879 (2011) (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child’s care, custody, or welfare to DFPS). Therefore, the city may not withhold incident report number 16-92058 from this requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

We note portions of incident report number 16-92058 are subject to section 552.130 of the Government Code. Section 552.130 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.<sup>2</sup> *See* Gov’t Code § 552.130(a). Upon review, we find portions of incident report number 16-92058 consist of motor vehicle record information. Accordingly, the city must generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

As previously noted, the requestor has a right of access to incident report number 16-92058 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. Where information falls within both a general

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<sup>2</sup>The 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).

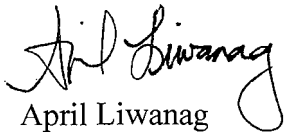
and a specific provision of law, the specific provision prevails over the general. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 261.105(a) of the Family Code 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 city must withhold the motor vehicle record information we marked in incident report number 16-92058 under section 552.130 of the Government Code.

In summary, the city must withhold incident report number 09-38743 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the motor vehicle record information we marked in incident report number 16-92058 under section 552.130 of the Government Code. The city must release the remaining information to this requestor.<sup>3</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,



April Liwanag  
Attorney  
Open Records Division

AML/eb

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<sup>3</sup>We note that because the requestor has a right of access to information being released in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor. *See* Fam. Code § 261.105(a).

Ref: ID# 668858

Enc. Submitted documents

c: Requestor  
(w/o enclosures)