



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 20, 2017

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
1400 South Lamar Street
Dallas, Texas 75215

OR2017-26478

Dear Ms. McClellan:

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# 684860 (DPD Request No. 2017-19135).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses statutes that make information confidential, such as section 261.201(a) of the Family Code, which provides as follows:

¹We note, and you acknowledge, the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the department's violation of section 552.301 in requesting this decision.

(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 in an investigation of alleged or suspected child abuse or neglect under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Thus, the submitted information is subject to section 261.201. As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201(a) of the Family Code.

However, section 261.201 provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Subchapter E of chapter 264 of the Family Code concerns the establishment and duties of children’s advocacy centers. *See id.* §§ 264.401-.411. Section 264.405 of the Family Code directs children’s advocacy centers to provide services for victims of child abuse and their families. *Id.* § 264.405. Furthermore, section 264.408(c) of the Family Code provides “a law enforcement agency . . . may share with a [children’s advocacy] center information that is confidential under Section 261.201 as needed to provide services” under chapter 264 of the Family Code. *Id.* § 264.408(c).

In this instance, the requestor is a representative of the Dallas Court Appointed Special Advocates (“CASA”). However, the requestor does not state whether the requested report is sought for the purposes of providing services under chapter 264 of the Family Code. Therefore, we must rule conditionally. If the department determines the information at issue is not sought to provide services under chapter 264, then it may not release the information at issue on that ground, and the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a). If, however, the department determines the information at issue is needed to provide services under chapter 264 of the Family Code, then the department generally has the discretion to release the information at issue to this requestor pursuant to section 264.408(c). We note information shared with or provided to CASA under section 264.408(c) retains its

confidentiality under section 261.201(a) of the Family Code. *See id.* We also note the requestor's statutory right of access prevails over the doctrine of 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); *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). However, we note portions of the information at issue are subject to section 552.130 of the Government Code.²

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 find the information we marked is motor vehicle record information that is generally confidential under section 552.130 of the Government Code. We note section 552.130 is not a general exception under the Act because it has its own access provisions. *See ORDs* 613 at 4, 451 at 4.

Thus, if the department determines the information at issue is needed to provide services under chapter 264 of the Family Code, there is a conflict between the confidentiality provision found in section 552.130 of the Government Code and the access provided by section 264.408 of the Family 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 Gov't Code* § 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 552.130 of the Government Code specifically protects motor vehicle record information and contains its own release provisions. In contrast, section 264.408 allows designated types of entities to share with child advocacy centers information that is confidential under section 261.201 as needed to provide services under chapter 264 of the Family Code. *See Fam. Code* § 264.408(c). Accordingly, in this instance, we find section 552.130 of the Government Code is a more specific statute than section 264.408 of the Family Code. Thus, section 552.130 of the Government Code prevails over section 264.408 of the Family Code. Therefore, if the department determines release of the submitted information is needed to provide services under chapter 264 of the Family Code, it has the discretion to release the information at issue to this requestor pursuant to section 264.408(c), but must withhold the information we have marked under section 552.130 of the Government Code.

²The 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).

In summary, if the department determines the information is needed to provide services under chapter 264 of the Family Code, then the department has the discretion to release the submitted information to this requestor pursuant to section 264.408(c) of the Family Code. However, in releasing the submitted information, the department must withhold the information we have marked under section 552.130 of the Government Code. If, however, the department determines the submitted information is not needed to provide services under chapter 264 of the Family Code, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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, 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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/tdw

Ref: ID# 684860

Enc. Submitted documents

c: Requestor
(w/o enclosures)