



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 21, 2017

Mr. Bob D. Odom  
Assistant District Attorney  
27<sup>th</sup> Judicial District of Texas  
P.O. Box 540  
Belton, Texas 76513-0540

OR2017-29065

Dear Mr. Odom:

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# 695580.

The Bell County District Attorney's Office (the "district attorney's office") received a request for information pertaining to the arrest of a named individual. The district attorney's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the district attorney's office claims 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. Section 261.201 of the Family Code provides, in relevant 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). The district attorney's office states the submitted information submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the district attorney's office. *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 chapter 261 of the Family Code. The district attorney's office states it has not adopted a rule that governs the release of this type of information. Therefore, the district attorney's office must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the submitted information includes the requestor's client's fingerprints. Section 560.003 of the Government Code provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 of the Government Code provides, "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Accordingly, we find a person or the person's authorized representative has a right of access under section 560.002(1)(A) to that person's biometric information. In this instance, the requestor has a right of access to the submitted fingerprints pursuant to section 560.002(1)(A). Thus, there is a conflict between the confidentiality mandated under section 261.201 of the Family Code and the right of access provided to this requestor under section 560.002 of the Government Code.

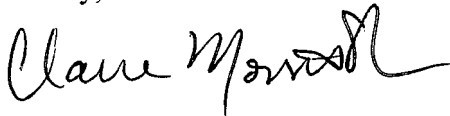
Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Id.* § 311.026(b); *City 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.). In this instance, we find section 261.201 of the Family Code generally applies to information used or developed in an investigation of alleged child abuse or child neglect. Section 560.002, however, applies specifically to biometric identifier information. Accordingly, we find the right of access provided to this requestor under section 560.002 prevails over the general confidentiality of section 261.201 of the Family Code. We note although the district attorney's office asserts the information at issue is excepted under section 552.101 of the Government Code in

conjunction with common-law privacy, a statutory right of access generally prevails over the common law. *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 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”). Thus, with the exception of the submitted fingerprints, which must be released to this requestor pursuant to section 560.002 of the Government Code, the district attorney’s office 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 695580

Enc. Submitted documents

c: Requestor  
(w/o enclosures)