



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2018

Mr. Jose Hernandez
Records Supervisor
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2018-02140

Dear Mr. Hernandez:

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# 694103 (ORR 107658).

The Edinburg Police Department (the "department") received a request for all information pertaining to a named individual and a specified address, including a specified report. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(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 neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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(4) (defining “neglect” for purposes of chapter 261 of the Family Code). Thus, this information is generally confidential under section 261.201. We note the requestor is an investigator with the Child Protective Services Division 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 submitted information indicates the person suspected of child neglect 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). Although the department claims some of the submitted information is excepted from disclosure under section 552.108 of the Government Code, a statute governing the release of specific information prevails over the general exceptions to disclosure found in the Act. *Attorney General Opinion DM-146 at 3 (1992)*; *Open Records Decision Nos. 613 at 4 (1993)* (exceptions in Act cannot impinge on statutory right of access to information), *451 at 4 (1986)* (specific statutory right of access provisions overcome Act’s general exceptions to disclosure). Therefore, the department may not withhold the submitted information from this requestor under section 552.108 of the Government Code. Although the department also asserts some of the submitted information is subject to section 552.101 of the Government Code in conjunction with common-law privacy, when a statute directly conflicts with a common-law principle or claim, the statutory provision controls and preempts common-law. *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 the statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir, 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the department may not withhold any of the submitted information under

section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, the department must release the submitted information.¹

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 694103

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.105(a). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.