



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2019

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

OR2019-01751

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# 747055.

The Weatherford Police Department (the "department"), which you represent, received a request for video pertaining to a specified incident involving the requestor. You claim 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.

Initially, we must address the department's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the department received the request for information on October 4, 2018. Accordingly, the department's ten-business-day deadline was October 18, 2018. However, you did not request a ruling from this office until November 6, 2018. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Further, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor provided the requisite information under section 1701.661(a) for the body worn camera recordings. Section 1701.662 of the Occupations Code provides, in relevant part:

(a) Notwithstanding Section 552.301(b), Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the 20th business day after the date of receipt of the written request.

*See id.* § 1701.662(a) (emphasis added). As previously discussed, pursuant to section 552.301(b), a governmental body is required to ask for a decision from this office and state which exceptions apply to the requested information within ten business days after receipt of the request for information. Gov't Code § 552.301(b). Thus, for body worn camera recordings, section 1701.662(a) overrides section 552.301(b)'s time deadline for seeking a decision from this office and stating which exceptions apply. As noted above, the department received the instant request for information, which included the proper request for the body worn camera recordings, on October 4, 2018. Accordingly, pursuant to section 1701.662(a), you were required to request a ruling on the information at issue by November 1, 2018. However, you did not request a ruling from this office until November 6, 2018. *See id.* § 552.308(a)(1). Accordingly, we conclude the department also failed to comply with the time requirements of section 1701.662(a) of the Occupations Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The department claims

sections 552.101 and 552.108 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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 261.201 of the Family Code, which provides as follows:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You state, and we agree, the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. Accordingly, this information falls within the scope of section 261.201 of the Family Code. *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 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). We note the requestor is a parent of the child victim listed in the information at issue, but the requestor is alleged to have committed the alleged

abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *Id.* § 261.201(k). The department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, some of the information at issue is subject to article 2.1396 of the Code of Criminal Procedure, which provides:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person's breath or blood is taken.

Crim. Proc. Code art. 2.1396. The information at issue includes video recordings made by or at the direction of an officer employed by the department and portions of these recordings contain footage of the requestor being arrested on suspicion of an offense under section 49.045 of the Penal Code. *See* Penal Code § 49.045 (driving while intoxicated with a child passenger). Therefore, the requestor is entitled to receive a copy of portions of these video recordings that depict the stop, the arrest, or the conduct of the individual pursuant to section 2.1396.

However, there is a conflict between the confidentiality provided under section 261.201(k) of the Family Code and the right of access provided under article 2.1396 of the Code of Criminal Procedure for the portions of the video recordings at issue. 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 the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 261.201 generally pertains to all records of alleged or suspected child abuse or neglect, article 2.1396 specifically pertains to video recordings pertaining to stops or arrests on suspected violations of sections 49.04, 49.045, 49.07, and 49.08 of the Penal Code. Therefore, we find article

2.1396 is more specific than, and prevails over, section 261.201. Additionally, we note article 2.1396 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Thus, the department must release the portions of the submitted video recordings that depict the stop, the arrest, or the conduct of the individual pursuant to article 2.1396 of the Code of Criminal Procedure. However, the department must withhold the remaining 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,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/mo

Ref: ID# 747055

Enc. Submitted documents

c: Requestor  
(w/o enclosures)