



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 5, 2019

Mr. Matthew L. Grove  
Assistant County Attorney  
Fort Bend County  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2019-06070

Dear Mr. Grove:

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# 753839.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to calls for service at a specified address since February of 2014. The sheriff's office states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2018-18015 (2019). For most of this information, which we have marked, we have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the sheriff's office must rely on Open Records Letter No. 2018-18015 as a previous determination and withhold or release the information we have marked in accordance with

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

that ruling.<sup>2</sup> However, regarding the remaining information, we are unable to determine whether the law, facts, or circumstances on which the prior ruling was based have changed. Thus, we must rule conditionally on this information.

The requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services (“DFPS”) in accordance with chapter 42 of the Human Resources Code. Pursuant to rules promulgated by DFPS under chapter 42 of the Human Resources Code, child-placing agencies are required to complete a foster home screening prior to verifying a foster home. *See* 26 T.A.C. § 749.2445(a); Hum. Res. Code § 42.042(a), (h)-(h-1) (executive commissioner shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies). Further, child-placing agencies are required to evaluate a foster home for compliance with licensing rules in certain instances. *See* 26 T.A.C. § 749.2801. Pursuant to section 749.2471, verifying a foster home includes completing and documenting the requirements set out in section 749.2447 of title 26 of the Texas Administrative Code. *Id.* § 749.2471(1); *cf.* Hum. Res. Code § 42.0561 (providing in part that “[b]efore a child-placing agency may issue a verification certificate for an agency foster home, the child-placing agency must obtain information relating to each family violence report at the applicant’s residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by [DFPS].”). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information about a prospective foster home:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following*:

- (i) *Obtain service call information from the appropriate law enforcement agency for each of the prospective foster parents’ addresses for the past two years.* Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

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<sup>2</sup>*See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

(iii) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

26 T.A.C. § 749.2447(7)(B)(i), (iii) (emphasis added); *see id.* § 749.2445(a); *see* 40 TAC § 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”); *see* 26 TAC §§ 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, sections 749.2447(7) and 749.2471 of title 26 of the Texas Administrative Code require a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of prospective foster parents from appropriate law enforcement agencies. *See* 26 T.A.C. §§ 749.2471, .2447(7). Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a prospective foster home pursuant to the requirements of section 749.2471.

The requestor is seeking all police responses to a specified address for the previous two years. However, the requestor does not represent the specified address pertains to a prospective foster parent. *See generally* Hum. Res. Code ch. 42. Therefore, we must rule conditionally. If the specified address does not pertain to a prospective foster parent, then the requestor does not have a right of access to the remaining information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. In that situation, we determine the law, facts, or circumstances on which Open Records Letter No. 2018-18015 was based have not changed. Accordingly, if the specified address does not pertain to a prospective foster parent, then the sheriff’s office must rely on Open Records Letter No. 2018-18015 as a previous determination and withhold or release the remaining information in accordance with that ruling. However, if the specified address pertains to a prospective foster parent, then the requestor has a right of access to the remaining information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. In that situation, the circumstances on which Open Records Letter No. 2018-18015 was based have changed regarding the remaining information, and the sheriff’s office may not withhold any of the remaining information in accordance with that ruling. *See* ORD 673 (2001). A statutory right of access prevails over the Act’s general exceptions to public disclosure and 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); Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act); *see also CenterPoint 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). Therefore, in that situation, the sheriff’s office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy or under section 552.108 of the Government Code.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country.<sup>3</sup> Gov't Code § 552.130(a)(1), (2). Accordingly, the motor vehicle record information we have marked in the remaining information is generally confidential under section 552.130 of the Government Code.

Because section 552.130 of the Government Code has its own access provisions, section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 749.2447(7) of title 26 of the Texas Administrative Code and the confidentiality provided under section 552.130 of the Government Code. Where information falls within both a general and specific provision of law, the specific provision prevails over the general. *See* Gov't Code § 311.026; *Cuellar*, 521 S.W.2d at 277. Although section 749.2447(7) generally allows a child-placing agency access to service call information, section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than the right of access provided by section 749.2447(7). Accordingly, if the specified address pertains to a prospective foster parent, then the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, but must release the remaining information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code.

In summary, the sheriff's office must rely on Open Records Letter No. 2018-18015 as a previous determination and withhold or release the information we have marked in accordance with that ruling. If the specified address does not pertain to a prospective foster parent, then the sheriff's office must rely on Open Records Letter No. 2018-18015 as a previous determination and withhold or release the remaining information in accordance with that ruling. However, if the specified address pertains to a prospective foster parent, then the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, but must release the remaining information pursuant to section 749.2447(7) of title 26 of the Texas Administrative 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.

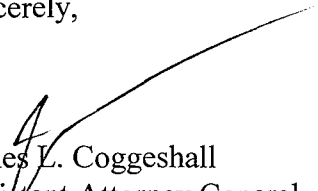
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/mo

Ref: ID# 753839

Enc. Submitted documents

c: Requestor  
(w/o enclosures)