



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2019

Ms. Brittaney N. Davis
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-08909

Dear Ms. Davis:

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# 757374 (ORR# W080126).

The City of Fort Worth (the "city") received a request for records related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 section 261.201 of the Family Code, which provides, in relevant part:

(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.

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. *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) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, the submitted information is within the scope of section 261.201 of the Family Code. The city does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code.

You ask whether the submitted information can be provided to the requestor through an intergovernmental transfer. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision. No. 516 (1989). However, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute’s enumerated entities. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). Section 261.201 of the Family Code is a confidentiality statute with its own release provisions. Therefore, the city may not provide any of the submitted information to the requestor through an intergovernmental transfer.

In this instance, the requestor is with the Adult Protective Services (“APS”) division of the Texas Department of Family and Protective Services (“DFPS”). Under chapter 48 of the Human Resources Code, DFPS’s duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154(a) of the Human Resources Code provides as follows:

[DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of [DFPS]'s or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or person with a disability. A person, agency, or institution that has a record or document that [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to [DFPS] or state agency that requested the record or document.

Id. § 48.154(a). The requestor states APS seeks the records at issue as part of an investigation. Consequently, DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code. *See id.* §§ 48.151, .152, .154(a). Thus, the requestor generally has a right of access to the information pursuant to section 48.154. However, as noted above, section 261.201(a) of the Family Code states any release must be "for purposes consistent with the Family Code." *See* Fam. Code § 261.201(a). This office cannot determine whether the release of the submitted information is consistent with the Family Code. Therefore, if the city determines release of the submitted information is not consistent with the Family Code, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a). *See* Attorney General Opinions DM-353 at 4 n. 6 (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5; *see also* Fam. Code § 261.201 (b)-(g), (k) (listing entities authorized to receive information under section 261.201 of the Family Code). However, if the city determines the release of the submitted information is consistent with the Family Code, then the city must release the submitted information to the requestor.

If the city determines the release of the submitted information is consistent with the Family Code, then we note the submitted information includes motor vehicle record information subject to section 552.130 of the Government Code.¹ Section 552.130 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. Accordingly, if the city determines the release of the submitted information is consistent with the Family Code, then the city must generally withhold the motor vehicle record information we marked under section 552.130.

¹The 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).

However, as noted above, section 48.154 of the Human Resources Code provides the requestor with a right of access to the submitted information. We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986). We conclude, however, because section 552.130 of the Government Code has its own access provision, this section is not a general exception under the Act. *See* Gov't Code § 552.130(b); *see also* Attorney General Opinions GA-0055 at 3-4 (2003) (where statute specifically authorizes release of information under certain circumstances or to particular entities, that information may only be released or transferred in accordance therewith), DM-353 at 4-5 n.6 (detailed provisions in state law for disclosure of records would not permit disclosure "to other governmental entities and officials . . . without violating the record's confidentiality"), JM-590 at 5 ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others"). Therefore, we must address the conflict between the access provided under section 48.154 and the confidentiality provided under section 552.130. 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 the legislature intended for the general provision to prevail. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *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); Open Records Decision No. 583 at 2 (1990) (specific statute stands as an exception or qualification to the more general). Although section 48.154 generally provides DFPS representatives with access to any information necessary to perform their duties under chapter 48 of the Human Resources Code, section 552.130 of the Government Code is specifically applicable only to motor vehicle record information. Thus, we find section 552.130 of the Government Code is more specific than the general right of access under section 48.154. Moreover, the statutory predecessor to section 48.154, section 48.0835 of the Human Resources Code, was enacted prior to section 552.130 of the Government Code. *See* Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting Gov't Code § 552.130); Act of May 24, 1993, 73d Leg., R.S., ch. 651, § 1, 1993 Tex. Gen. Laws 2436 (enacting Hum. Res. Code § 48.0835). Therefore, if the city determines the release of the submitted information is consistent with the Family Code, then notwithstanding the provisions of section 48.154, the city must withhold the information we marked under section 552.130.

In summary, if the city determines release of the submitted information is not consistent with the Family Code, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines the release of the submitted information is consistent with the Family Code, then the city must withhold the information we marked under section 552.130 of the Government Code and release the remaining information to the requestor pursuant to section 48.154 of the Human Resources 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,



Emily Buchanan
Attorney
Open Records Division

EB/gw

Ref: ID# 757374

Enc. Submitted documents

c: Requestor
(w/o enclosures)