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ATTORNEY GENERAL OF TEXAS

May 20, 2019

Ms. Stacie S. White
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Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2019-13364

Dear Ms. White:

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# 766446 (ORR# 193-2019).

The Saginaw Police Department (the "department"), which you represent, received two requests from representatives of the Texas Department of Family and Protective Services ("DFPS") for information pertaining to two named individuals. The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions 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(a) of the Family Code, which provides as follows:

[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 report number 1900003571 is subject to chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, this information is generally confidential under section 261.201(a) of the Family Code. Section 261.105(a) of the Family Code 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). The person suspected of child abuse or neglect in this report was responsible for each of the child victim’s care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child’s care, custody, or welfare includes a member of child’s family or household as defined by Family Code chapter 71). Accordingly, section 261.105(a) is applicable and the confidentiality of section 261.201(a) does not apply. *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).

Section 552.130 of the Government Code 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. The department must generally withhold the motor vehicle record information it has marked in report number 1900003571 under section 552.130 of the Government Code. As previously noted, the requestors have a statutory right of access to the report at issue pursuant to section 261.105(a) of the Family Code, and a statutory right of access generally prevails over the Act’s general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4, 451 at 4. However, because section 552.130 has its own access provisions, it is not a general exception under the Act. Thus, we must address the conflict between the right of access provided under section 261.105 of the Family Code and the confidentiality provided by 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* *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 277 (Tex. Crim. App. 1975 (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). While section 261.105(a) provides DFPS with general access to reports received by law enforcement

agencies that allege abuse or neglect by a person responsible for a child's care, custody, or welfare, section 552.130 specifically protects motor vehicle record information from disclosure. Thus, we find the confidentiality provided by section 552.130 is more specific than the right of access provided by section 261.105(a). We note a statutory right of access prevails over a claim under 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); *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). Accordingly, the department must withhold the information it has marked under section 552.130 of the Government Code, but must release the remaining information in report number 1900003571 pursuant to section 261.105 of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The requestors ask for all information held by the department concerning two named individuals. Therefore, to the extent the department maintains any remaining unspecified law enforcement information depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

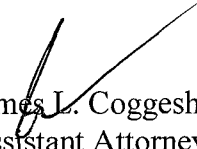
However, section 411.114 of the Government Code allows, among other things, for DFPS to obtain criminal history record information ("CHRI") concerning certain individuals. *See id.* § 411.114(a)(2)-(3). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). As noted above, a statutory right of access prevails over common-law privacy. *See Collins*, 297 S.W.3d at 415. Accordingly, if either of the named individuals falls within the purview of section 411.114 of the Government Code, then the department must release the CHRI pertaining to that individual pursuant to section 411.114(a) of the Government Code, to the extent such information exists.

In summary, the department must withhold the information it has marked under section 552.130 of the Government, but must release the remaining information in report number 1900003571 pursuant to section 261.105 of the Family Code.¹ To the extent the department maintains any remaining unspecified law enforcement information depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if either of the named individuals falls within the purview of section 411.114 of the Government Code, then the department must release the CHRI pertaining to that individual pursuant to section 411.114(a) of the Government Code, to the extent such information exists.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 766446

Enc. Submitted documents

c: Requestors
(w/o enclosures)

¹Because the requestors have a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.