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ATTORNEY GENERAL OF TEXAS

June 11, 2019

Mr. Eric C. Farrar
Counsel for the City of Dickinson
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2019-15509

Dear Mr. Farrar:

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# 769915 (ORR# COD19-013).

The City of Dickinson (the "city"), which you represent, received a request for reports pertaining to a specified address during a specified time period. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted 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.

...

(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 T.A.C. § 745.21(8) (defining "child-placing agency"), (32) (defining "permit"), (33) (defining "permit holder"); *see* 26 T.A.C. §§ 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 seeks police responses to a specified address for the previous two years. Further, the requestor states the specified address pertains to a prospective foster parent. *See generally* Hum. Res. Code ch. 42. Therefore, the requestor has a right of access to the submitted information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. We note a statutory right of access prevails over 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). Therefore, the city may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

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 made confidential by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). The city indicates it is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. The city marked a telephone number and address that it seeks to withhold. We conclude the city must generally withhold the marked telephone number and address under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of the originating telephone and address number furnished by a 9-1-1 service supplier. If the marked information does not consist of the originating telephone number and address provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.318.

However, as previously noted, the requestor has a statutory right of access to the submitted information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. Therefore, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provided under section 772.318 of the Health and Safety 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 772.218 of the Health and Safety Code specifically protects originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier. Thus, we find the confidentiality provided by section 772.218 of the Health and Safety Code is more specific than, and prevails over, the right of access provided by section 749.2447(7). Accordingly, the city must generally release the submitted information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code; however, if the information the city marked consists of the originating telephone and address number furnished by a 9-1-1 service supplier, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 769915

Enc. Submitted documents

c: Requestor
(w/o enclosures)