



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2019

Ms. Alicia K. Kreh
Counsel for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla & Elam, L. L. P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2019-19588

Dear Ms. Kreh:

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# 775909.

The Flower Mound Police Department (the "department"), which you represent, received two requests for information pertaining to a specified incident. You state the department will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

The submitted information includes officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

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, neither requestor gives the requisite information under section 1701.661(a). As the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). Upon review, we find the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *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 disabilities of minority removed for general purposes). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this instance, the second requestor is a parent of the child victim listed in the information at issue, and the first requestor is her attorney. However, we note the second requestor is alleged to have committed the suspected abuse or neglect. Thus, the requestors do not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Therefore, the department must generally withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, the remaining information includes recordings 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 remaining information includes video recordings made by or at the direction of officers employed by the department that contain footage of the second requestor being stopped or 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). Thus, the requestors are entitled to receive portions of these video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert section 552.108 to withhold the information at issue, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.,* 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). Because section 552.108 is a general exception under the Act, the requestor's right of statutory access under article 2.1396 prevails. Therefore, the department may not withhold any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the second requestor, or a procedure in which a specimen of the second requestor's blood or breath is taken under section 552.108 of the Government Code.

However, there is a conflict between the confidentiality provided under section 261.201(a) 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(a) generally pertains to all records of alleged or suspected child abuse or neglect, article 2.1396 specifically pertains to videos 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. We also 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). Therefore, the department must release any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the second requestor, or a procedure in which a specimen of the second requestor's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure.

Additionally, we note the remaining information includes Toxicology/Blood Alcohol Kit Laboratory Submission Forms and Specimen Routing Reports. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. In this instance, the second requestor is the individual who provided the blood specimen at the request of a peace officer. Although you claim the information is excepted from disclosure under section 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* ORD 451 at 4. Therefore, the Toxicology/Blood Alcohol Kit Laboratory Submission Forms and Specimen Routing Reports at issue may not be withheld under section 552.108 of the Government Code. Accordingly,

we find the requestors generally have a right of access to the information at issue pursuant to section 724.018 of the Transportation Code.

Thus, although the remaining information is generally confidential under section 261.201(a) of the Family Code, section 724.018 provides the requestors with a right of access to the Toxicology/Blood Alcohol Kit Laboratory Submission Forms and Specimen Routing Reports. Therefore, there is a conflict between the confidentiality provision of section 261.201(a) and the right of access provision of section 724.018. As noted above, 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); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 261.201 of the Family Code generally makes records of alleged child abuse or neglect confidential, section 724.018 of the Transportation Code specifically requires release of information pertaining to the analysis of a breath specimen to certain parties. We therefore conclude the Toxicology/Blood Alcohol Kit Laboratory Submission Forms and Specimen Routing Reports may not be withheld from these requestors under section 261.201(a). Although you also assert section 552.108 for this information, a statutory right of access prevails over the Act's general exceptions to public disclosure under the Act. *See* ORD 451. Thus, the department must release the Toxicology/Blood Alcohol Kit Laboratory Submission Forms and Specimen Routing Reports to these requestors pursuant to section 724.018 of the Transportation Code.

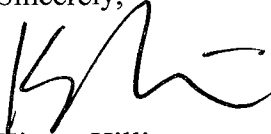
In summary, as the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. The department must release any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the second requestor, or a procedure in which a specimen of the second requestor's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The department must release the Toxicology/Blood Alcohol Kit Laboratory Submission Forms and Specimen Routing Reports pursuant to section 724.018 of the Transportation Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 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, 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,

A handwritten signature in black ink, appearing to read 'KH' followed by a stylized flourish.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/jxd

Ref: ID# 775909

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)