



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 3, 2019

Ms. Kayla Landeros
City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2019-24455

Dear Ms. Landeros:

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# 783408.

The City of Temple (the "city") received a request for information and correspondence pertaining to the requestor's client, two named individuals, and particular officers employed by the city's police department (the "department"). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You state the city received the request for information on June 5, 2019. You do not inform us the city was closed for any business days between June 5, 2019 and June 19, 2019. Accordingly, the city was required to provide the information required by section 552.301(b) by June 19, 2019. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked June 25, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims sections 552.101 and 552.108 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the city's arguments under this exception against release of the submitted information. However, we find the city has failed to establish a compelling reason to address its remaining claimed exception.

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. This section encompasses information made confidential by other statutes, such as 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 by the department of alleged child abuse or neglect under 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 of Family Code). You have not indicated the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find the submitted information is within the scope of section 261.201 of the Family Code. Accordingly, the city must generally withhold it under section 552.101 of the Government Code.

However, we note the submitted documents include the arrestee's blood test results. 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. *See* Transp. Code § 724.018. In this instance, the requestor is the attorney for the individual

Thus, although the submitted information is generally confidential under section 261.201(a) of the Family Code, section 724.018 provides the requestor with a right of access to the information pertaining to the analysis of the blood specimen obtained by a peace officer. Therefore, there is a conflict between the confidentiality provision of section 261.201(a) and the right of access provision of section 724.018. 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 blood specimen to certain parties. We therefore conclude the information pertaining to the analysis of a blood specimen may not be withheld from this requestor under section 261.201(a). Thus, the city must release the information pertaining to the blood test results, which we have marked, to this requestor pursuant to section 724.018 of the Transportation Code and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ms. Kayla Landeros - Page 4

Ref: ID# 783408

Enc. Submitted documents

c: Requestor
(w/o enclosures)