



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 31, 2019

Mr. Stephen D. Gates
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2019-36579

Dear Mr. Gates:

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# 803769 (ORR# M028121-100719).

The City of Midland (the "city") received a request for a specified incident report. The city claims the submitted information is either not subject to release pursuant to chapter 1701 of the Occupations Code or excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The submitted information includes body worn camera recordings of city police officers. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides the following:

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). The city asserts the requestor does not give the requisite information under section 1701.661(a). Therefore, the city argues the requestor did not properly request the body worn camera recordings pursuant to chapter 1701. However, we find the request includes the information required by section 1701.661(a). *Id.* Accordingly, the requestor properly requested the body worn camera recordings at issue and we will consider the city's arguments against their disclosure.

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 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). The city asserts the submitted information was used or developed in an investigation by the city's police department (the "department") under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Upon review, we find the information is within the scope of section 261.201 of the Family Code. The city does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the city must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

The submitted information contains a CR-3 accident report that is subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident

report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

We are unable to determine whether the requestor is a person listed under section 550.065(c). Thus, we must rule conditionally. If the requestor is not a person listed under section 550.065(c) of the Transportation Code, then the city is not required to release the CR-3 accident report pursuant to section 550.065(b) of the Transportation Code. However, if the requestor is a person listed under section 550.065(c), then the requestor has a right of access to the CR-3 accident report pursuant to section 550.065(b). In that situation, there is a conflict between the confidentiality provided under section 261.201(a) of the Family Code and the right of access provided under section 550.065(c) of the Transportation Code for the redacted accident report. 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.). Although section 261.201(a) generally pertains to all records of alleged child abuse or neglect, section 550.065(c) specifically pertains to accident reports. Accordingly, we find section 550.065 is more specific than, and prevails over, section 261.201. Thus, if the requestor is a person listed under section 550.065(c) of the Transportation Code, then the city must release the CR-3 accident report pursuant to section 550.065(c) of the Transportation Code.

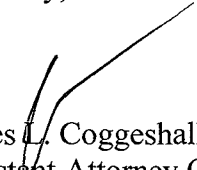
In summary, if the requestor is a person listed under section 550.065(c) of the Transportation Code, then the city must release the CR-3 accident report pursuant to section 550.065(c) of the Transportation Code, but withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is not a person listed under section 550.065(c) of the Transportation 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.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 803769

Enc. Submitted documents

c: Requestor
(w/o enclosures)