



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 14, 2020

Ms. Jo Ann Pate  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102-6311

OR2020-10844

Dear Ms. Pate:

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# 821786 (ORR# W096654).

The Fort Worth Police Department (the "department") received a request for all records related to a specified address during a specified time period. The department states it is releasing some of the requested information. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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. This section encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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). The submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code by the department. *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 this information is within the scope of section 261.201(a). Thus, this information is generally confidential under section 552.101 of the Government Code in conjunction with 261.201(a) of the Family Code.

However, we note 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, and the information pertains to the address of a prospective foster parent. *See generally* Hum. Res. Code ch. 42. A child-placing agency must 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 749.2470, 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.* § 749.2470(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 the department.”). 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 also id.* § 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21), 749.2445(a). Thus, sections 749.2447(7) and 749.2470 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. §§ 749.2470, .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 749.2470.

The requestor seeks information involving a prospective foster parent at her residence for the previous two years. Accordingly, we conclude 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. However, as noted above, section 261.201(a) states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). We find release of the information at issue to this requestor is for a purpose consistent with the Family Code. Thus, pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code, the department may not withhold the submitted information under section 552.101 in conjunction with section 261.201(a).

The department claims a portion of the submitted information is subject to section 552.101 of the Government Code. Section 552.101 also encompasses chapter 67 of the Code of Criminal Procedure, which addresses intelligence information pertaining to street gangs. Article 67.051(a) provides, in part, “a criminal justice agency . . . shall compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs.” Crim. Proc. Code art. 67.051(a). Article 67.101(a) provides:

A criminal justice agency may release on request information maintained under this chapter to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39[.]

*Id.* art. 67.101(a). Further, article 67.103 of the Code of Criminal Procedure provides release of this information to a person who is not entitled to the information is a Class A misdemeanor. *See id.* art. 67.103(b). We understand the information at issue, which the department marked, is compiled in a gang database created pursuant to chapter 67 of the Code of Criminal Procedure. We also understand the requestor is not entitled to obtain the information under article 67.101. Accordingly, we conclude the department must generally

withhold the information it marked under section 552.101 of the Government Code in conjunction with article 67.101 of the Code of Criminal Procedure.<sup>1</sup>

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 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. Accordingly, the department must generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

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. A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. We conclude, however, because section 552.130 of the Government Code has its own access provisions, section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provisions found in article 67.101 of the Code of Criminal Procedure and section 552.130 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevails); *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 749.2447(7) generally requires release of information for a specified address and time period to this requestor, article 67.101 specifically makes confidential criminal information compiled into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs and section 552.130 specifically protects motor vehicle record information. *See* Code Crim. Proc. Arts. 67.101, .103; Gov't Code § 552.130; 26 T.A.C. § 749.2447(7). Thus, the confidentiality provisions found in article 67.101 and section 552.130 prevail over the more general statutory right of access granted to the requestor by section 749.2447(7) of title 26 of the Texas Administrative Code. Consequently, the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with article 67.101 of the Code of Criminal Procedure and must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the

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<sup>1</sup> As our ruling is dispositive for this information, we need not address the department's argument against its disclosure.

<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

remaining information to this requestor pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code.<sup>3</sup>

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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/rm

Ref: ID# 821786

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note that because the requestor has a statutory right of access to the information being released in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.