KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Ms. Hannah McAdams
Records Supervisor
Anderson County Sheriff's Office
1200 East Lacy Street
Palestine, Texas 75801

OR2020-12696

Dear Ms. McAdams:

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# 826232.

The Anderson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1085 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes police officers' body worn camera recordings. 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:

> 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

[1] Although you cite section 552.109 of the Government Code, we understand you to raise section 552.1085 based on the substance of your argument.

> (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor 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.[2] 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 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 protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

> (a) Except as provided by Section 261.203, the 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 remaining information was used or developed in an investigation of alleged or suspected child neglect. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(4) (defining "neglect" for purposes of chapter 261 of the Family Code). Thus, this information is generally confidential under section 261.201. We note the requestor is a representative of the Child Protective Services Division of the Texas Department of Family and Protective Services ("DFPS"). Section 261.105(a) provides "[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to [DFPS]." *See id.* § 261.105(a). In this instance, the remaining information indicates the person suspected of child neglect was responsible for the child's care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child's care, custody, or welfare

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[2] As we are able to make this determination, we need not address your arguments against disclosure of this information.

includes a member of the child's family or household as defined by chapter 71 of the Family Code); *see also id.* § 71.005 (household is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply in this instance. *See* Attorney General Opinion No. GA-0879 (2011) (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child's care, custody, or welfare to DFPS). Although the sheriff's office claims the remaining information is excepted from disclosure under section 552.108 of the Government Code, a statute governing the release of specific information prevails over the general exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 3 (1992); Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome Act's general exceptions to disclosure). Therefore, the sheriff's office may not withhold the remaining information from this requestor under section 552.108 of the Government Code.

The sheriff's office also asserts section 552.1085 for some of the remaining information. Section 552.1085 of the Government Code, provides, in pertinent part:

> (c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). A stated above, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4, 451. Because section 552.1085 has its own access provisions, we conclude section 552.1085 is not a general exception under the Act. Thus, we must address the applicability of section 552.1085 to the remaining information.

For purposes of section 552.1085, "sensitive crime scene image" means "a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See* Gov't Code § 552.1085(a)(6). You state the criminal case associated with the remaining information is still pending. We note section 552.1085 of the Government Code applies to information concerning closed criminal cases. *See id.* Consequently, section 552.1085 is inapplicable, and the sheriff's office may not withhold the remaining information under section 552.1085(c) of the Government Code.

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or 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.[3] *Id.* § 552.130(a). Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the sheriff's office must generally withhold the information we have marked in the remaining documents as well as the audible driver's license number within the remaining audio recordings under section 552.130.

As previously noted, the requestor has a right of access to the remaining information under section 261.105(a). We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. However, because section 552.130 of the Government Code has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 261.105 of the Family Code and the confidentiality provided by section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See 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 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 261.105(a) generally allows DFPS access to reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare, section 552.130 specifically protects motor vehicle record information. We therefore conclude section 261.105(a) does not provide DFPS access to information subject to section 552.130. Thus, notwithstanding the provision of section 261.105(a) of the Family Code, the sheriff's office must withhold the information we have marked in the remaining documents as well as the audible driver's license number within the submitted audio recordings under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The sheriff's office must withhold the information we have marked in the submitted documents as well as the audible driver's license number within the submitted audio recordings under section 552.130 of the Government Code. The sheriff's office must release the remaining information.[4]

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.

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[3] The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[4] We note that because the requestor has a statutory right of access to the submitted information in this instance, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.

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/jlbm

Ref: ID# 826232

Enc. Submitted documents

c: Requestor
(w/o enclosures)