



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2020

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

OR2020-17085

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# 835055.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information consists of grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary

exclusion. *See* ORD 513. Thus, to the extent the town holds the grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the town is not required to release that information in response to the instant request. To the extent the town holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your arguments against its disclosure.

Next, we note the submitted information includes court-filed documents, which we have marked. Section 552.022 of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although you seek to withhold some of this information under section 552.101 of the Government Code in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, no portion of the court-filed documents we have marked may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, as section 552.130 of the Government Code makes information confidential under the Act, we will consider your argument under this section for the information subject to section 552.022(a)(17). Further, we will address your arguments against disclosure of the remaining information.

Section 552.101 of the Government Code excepts from public 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 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 information we have marked was used in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.*

§§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *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 the disabilities of minority removed for general purposes). Accordingly, we find this information is within the scope of section 261.201(a) of the Family Code. The town does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the information we have marked is generally confidential pursuant to section 261.201(a) of the Family Code.

In this instance, the requestor is with the Adult Protective Services (“APS”) division of the Texas Department of Family and Protective Services (“DFPS”). Under chapter 48 of the Human Resources Code, DFPS’s duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See Hum. Res. Code* §§ 48.151, .152. Section 48.154(a) of the Human Resources Code provides as follows:

[DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or person with a disability. A person, agency, or institution that has a record or document that [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to [DFPS] or state agency that requested the record or document.

Id. § 48.154(a). The requestor states APS seeks the records at issue as part of an investigation. Consequently, DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code. *See id.* §§ 48.151, .152, .154(a). Thus, the requestor generally has a right of access to the information at issue pursuant to section 48.154. However, as noted above, section 261.201(a) of the Family Code states any release must be “for purposes consistent with the Family Code.” *See Fam. Code* § 261.201(a). This office cannot determine whether the release of the information we have marked is consistent with the Family Code. Therefore, if the town determines release of the information we have marked is not consistent with the Family Code, then the town must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a). *See Attorney General Opinions* DM-353 at 4 n. 6 (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5; *see also Fam. Code* § 261.201 (b)-(g), (k) (listing entities authorized to receive information under section 261.201 of the Family Code). However, if the town determines the release of the information we have marked is

consistent with the Family Code, then the town must release the information we have marked to the requestor.

Further, the requestor has a right of access to the remaining requested information pursuant to section 48.154. Although the town asserts some of the information is confidential under common-law privacy, a statutory right of access prevails over a claim under common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541,544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Further, although the town asserts sections 552.137 and 552.147 of the Government Code to withhold portions of the information, 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 sections 552.137 and 552.147 are general exceptions under the Act, the requestor's statutory access under section 48.154 prevails, and the town may not withhold the information you have marked under section 552.137 or section 552.147 of the Government Code.

You also argue some of the remaining information is subject to section 552.101 of the Government Code. Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Upon review, we conclude the CHRI you have marked is generally confidential under section 552.101 in conjunction with section 411.083 of the Government Code.

You also raise section 552.130 of the Government Code for some of the remaining information. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. *Id.* § 552.130(a)(1), (2). Accordingly, the town must

generally withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right of access to the remaining information pursuant to section 48.154 of the Human Resources Code. As noted above, 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 48.154 and the confidentiality provisions found in sections 411.083 and 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 48.154 generally requires release of information found in records involving a DFPS report of abuse, neglect, or exploitation of an elderly person, section 411.083 specifically makes CHRI generated by TCIC or NCIC confidential and section 552.130 specifically protects motor vehicle record information. *See* Gov't Code §§ 411.083(a), 552.130; Hum. Res. Code § 48.154. Thus, the confidentiality provisions found in sections 411.083 and 552.130 of the Government Code prevail over the more general statutory right of access granted to the requestor by section 48.154 of the Human Resources Code. Consequently, the town must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, to the extent the town holds the grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the town is not required to release that information in response to the instant request. If the town determines release of the information we have marked is not consistent with the Family Code, then the town must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a). However, if the town determines the release of the information we have marked is consistent with the Family Code, then the town must release the information we have marked to the requestor. The town must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The town must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The town must release the remaining information.¹

¹ We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the town receives another request for this information from a different requestor, the town must again seek a ruling from this office.

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 835055

Enc. Submitted documents

c: Requestor
(w/o enclosures)