



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 1, 2020

Ms. Sally Ortiz  
Senior Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2020-24798

Dear Ms. Ortiz:

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# 846437 (ORR #P009643-071520).

The Plano Police Department (the "department") received a request for specified video recordings of the arrest of the requestor's client. 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.

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 protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *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 disabilities of minority removed for general purposes). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this instance, the requestor represents a parent of the child victim listed in the information at issue. However, the requestor’s client is alleged to have committed the suspected abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Therefore, the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, the submitted recording is subject to article 2.1396 of the Code of Criminal Procedure, which provides:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test;  
or
- (4) a procedure in which a specimen of the person’s breath or blood is taken.

Crim. Proc. Code art. 2.1396. The submitted video recording was made by or at the direction of officers employed by the department that contains footage of the requestor’s client being stopped or arrested on suspicion of an offense under section 49.045 of the Penal Code. *See* Penal Code § 49.045 (driving while intoxicated with a child passenger). Thus,

the requestor is entitled to receive portions of the video recording pursuant to article 2.1396 of the Code of Criminal Procedure. Although the department asserts section 552.108 to withhold the information at issue, 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 section 552.108 is a general exception under the Act, the requestor's statutory right of access under article 2.1396 prevails. Therefore, the department may not withhold any portion of the submitted video recording that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken under section 552.108 of the Government Code.

However, there is a conflict between the confidentiality provided under section 261.201(a) of the Family Code and the right of access provided under article 2.1396 of the Code of Criminal Procedure for the portions of the video recording at issue. 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); *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 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 261.201(a) generally pertains to all records of alleged or suspected child abuse or neglect, article 2.1396 specifically pertains to videos pertaining to stops or arrests on suspected violations of sections 49.04, 49.045, 49.07, and 49.08 of the Penal Code. Therefore, we find article 2.1396 is more specific than, and prevails over, section 261.201. We also note article 2.1396 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Therefore, the department must release any portion of the submitted video recording that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure.

In summary, the department must release any portion of the submitted video recording that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 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,

Amy Shipp  
Assistant Attorney General  
Open Records Division

ALS/gw

Ref: ID# 846437

Enc. Submitted documents

c: Requestor  
(w/o enclosures)