



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2020

Ms. Janese Dudash
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2020-25835

Dear Ms. Dudash:

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# 849367 (PIR No. W103905).

The Fort Worth Police Department (the "department") received a request for all police reports and call outs pertaining to two named individuals and a specified address. You state the department will release a portion of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted 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 protected by 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert, and we agree, report number 200044344 and call report numbers 191033091 and 200567296 were used or developed in investigations 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 section 261.201 as a 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). Thus, this information is generally confidential under section 261.201(a). In this instance, however, the requestor is a representative of the Texas Department of Family and Protective Services (“DFPS”). We note report number 200044344 and call report number 200567296 indicate the individual suspected of child abuse or 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 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 to these reports, and the confidentiality of section 261.201(a) does not apply to them. *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).

However, in call report number 191033091, the alleged suspect of child abuse or neglect is not responsible for the child victim’s care, custody, or welfare; therefore, section 261.105(a) of the Family Code is not applicable. *See* Fam. Code § 261.105(a). In this instance, as you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude call report number 191033091 is confidential pursuant to section 261.201 of the Family Code and must generally be withheld under section 552.101 of the Government Code on that basis. *See id.* § 261.201(a). However, we note section 261.201(a) also provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *See id.* Chapter 411 of the Government Code constitutes “applicable state law” in this instance.

Section 411.114(a) of the Government Code states in pertinent part:

(2) [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Thus, these provisions may grant the requestor a right of access to CHRI in the information at issue. In this case, the requestor is a representative of DFPS, but does not state whether the subject of the information at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the information at issue, and we must rule conditionally. Therefore, if the subject of the information at issue is not an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, the CHRI is not subject to release to this requestor under section 411.114, and call report number 191033091 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the subject of the information at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the requestor is authorized by section 411.114 of the Government Code to obtain CHRI from the department regarding that individual. *See id.* § 411.114.

We note call report number 200567296, which is subject to section 261.105 of the Family Code, 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.¹ *Id.* § 552.130(a). Accordingly, the department must generally withhold the motor vehicle record information we marked in call report number 200567296 under section 552.130 of the Government Code.

As previously noted, the requestor has a right of access to call report number 200567296 under section 261.105(a) of the Family Code. We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Record 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 general exception to disclosure under the Act). 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. Thus, we conclude section 261.105(a) does not provide DFPS access to information subject to section 552.130. Accordingly, notwithstanding the provision of section 261.105(a) of the Family Code, the department must withhold the motor vehicle record information we marked within call report number 200567296 under section 552.130 of the Government Code.

In summary, if the subject of the information at issue is not an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then call report number 191033091 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; however, if the subject of the information at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release CHRI to this requestor pursuant to section 411.114 of the Government Code, and must withhold the remaining information in call report number 191033091 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the motor vehicle record information we marked within call report number 200567296 under section 552.130 of the Government Code. The department must release the remaining information to this

¹ 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).

requestor.²

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 M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 849367

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As noted above, the requestor has a special right of access to the information being released in this instance. *See* Fam. Code § 261.105(a). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.