



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

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Mr. Daniel J. Olds
Counsel for the City of Lakeway
Bickerstaff Delgado Acosta, L.L.P.
3711 South MoPac Expressway
Building One, Suite 300
Austin, Texas 78746

OR2020-26339

Dear Mr. Olds:

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# 850775.

The Lakeway Police Department (the "department"), which you represent, received a request for all records related to a named individual at a specified address during a specified time period. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides as follows:

[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 agree some of the submitted information was used or developed in investigations under chapter 261 by the department. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Therefore, that information is within the scope of section 261.201 of the Family Code and 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. Pursuant to rules promulgated by DFPS under chapter 42 of the Human Resources Code, child-placing agencies are required to 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 [DFPS].”). 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 the prospective foster parent's residence for the previous two years. Accordingly, the requestor generally has a right of access to the submitted information pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code. Although the department also seeks to withhold some of the submitted information under section 552.108 of the Government Code and section 552.101 of the Government Code in conjunction with common-law privacy, we note a specific statutory right of access overcomes general exceptions to disclosure in the Act and prevails over a claim under common-law privacy. *See* Open Records Decision No. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act); *see also 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); *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). Therefore, pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code, the department may not withhold any portion of the submitted information under section 552.108 of the Government Code or common-law privacy. Further, 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 subject to chapter 261 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 information at issue under section 552.101 in conjunction with section 261.201(a) of the Family Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ 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.

¹ 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).

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 749.2447(7) and the confidentiality provision found in section 552.130 of the Government Code. Where information falls within both a general and specific provision of law, the specific provision prevails over the general. *See* Gov't Code § 311.026; *Cuellar*, 521 S.W.2d at 277. Although section 749.2447(7) generally allows a child-placing agency access to service call information, section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 of the Government Code is more specific than, and prevails over, the right of access provided by section 749.2447(7). Consequently, the department must withhold the information we marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor pursuant to section 749.2447(7) of title 26 of the Texas Administrative Code.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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jm

Ref: ID# 840775

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² 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.