



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2022

Mr. Kevin Bailey
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2022-00879

Dear Mr. Bailey:

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# 924109 (ORR No. M035112-100521).

The City of Midland (the "city") received a request for any and all records pertaining to case number 200917031. You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the submitted arguments 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 argue the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect by the city's police department (the "department"). *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). Upon review, we find the submitted information is subject to chapter 261 of the Family Code. 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 the city must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the submitted information includes CR-3 accident reports. Section 550.065 of the Transportation Code applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is a person listed under section 550.065(c). Therefore, the requestor has a right of access to the accident reports. Thus, we must address the conflict between the confidentiality provided under section 261.201(a) of the Family Code and the right of access provided under section 550.065(c). 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); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 261.201(a) generally pertains to all records of alleged or suspected child abuse or neglect, section 550.065(c) specifically pertains to accident reports. Therefore, we find section 550.065(c) is more specific than, and prevails over, section 261.201(a). Thus, the city may not withhold the accident reports from the requestor under section 552.101 of the Government Code in

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, including the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

conjunction with section 261.201(a) of the Family Code. We also note, although you assert section 552.108 of the Government Code to withhold this information, a statutory right of access prevails over a claim under the Act's general exceptions to public disclosure. *See* 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 access under section 550.065(c) prevails and the city may not withhold the accident reports from this requestor under section 552.108. Therefore, the city must release the accident reports to this requestor pursuant to section 550.065(c).

In summary, the city must release the CR-3 accident reports to this requestor pursuant to section 550.065(c) of the Transportation Code. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 924109

Enc. Submitted documents

c: Requestor
(w/o enclosures)