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ATTORNEY GENERAL OF TEXAS

March 9, 2022

Mr. Daniel Ray
Counsel for the City of Greenville
Scott, Ray, Pemberton & Goll P.L.L.C.
P.O. Box 1353
Greenville, Texas 75403

OR2022-06989

Dear Mr. Ray:

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# 936023.

The Greenville Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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."¹ Gov't Code § 552.101. Section 552.101 encompasses 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 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).

(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 submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the department 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 department must withhold the submitted information in its entirety from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² The department must also generally withhold the submitted information from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

However, the remaining information includes recordings 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 remaining information includes video recordings made by or at the direction of officers employed by the department that contain footage of the

² As our ruling is dispositive, we need not address your argument against disclosure of this information.

second 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 second requestor is entitled to receive portions of these video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although the department also 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 remaining video recordings that depicts the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the arrestee'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 recordings 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 remaining video recordings that depicts the stop, the arrest, the conduct of the arrestee, or a procedure in which a specimen of the arrestee's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure.

Additionally, we note the remaining information includes information pertaining to the analysis of the arrestee's blood. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. Transp. Code § 724.018. In this instance, the second requestor represents the individual who provided the specimen at the request of a peace officer. Although the department claims this information is excepted from disclosure under section 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* ORD 451 at 4. Therefore, the information we have indicated may not be withheld under section 552.108 of the Government Code.

Accordingly, we find the second requestor generally has a right of access to this information pursuant to section 724.018 of the Transportation Code.

Thus, although the information at issue is generally confidential under section 261.201(a) of the Family Code, section 724.018 provides the second requestor with a right of access to the information at issue. Therefore, there is a conflict between the confidentiality provision of section 261.201(a) and the right of access provision of section 724.018. As noted above, 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 of the Family Code generally makes records of alleged child abuse or neglect confidential, section 724.018 of the Transportation Code specifically requires release of information pertaining to the analysis of a breath or blood specimen to certain parties. We therefore conclude information we have indicated may not be withheld from the second requestor under section 261.201(a). Thus, the department must release the information we have indicated to the second requestor pursuant to section 724.018 of the Transportation Code.

In summary, the department must release to the second requestor any portion of the remaining video recordings that depict the stop, the arrest, the conduct of the arrestee, or a procedure in which a specimen of the arrestee's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The department must release to the second requestor the information we have indicated pursuant to section 724.018 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 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jm

Ref: ID# 936023

Enc. Submitted documents

c: Requestor
(w/o enclosures)