



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2022

Mr. Samuel R. Jimison
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2022-09709

Dear Mr. Jimison:

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# 939433 (CCPD File Nos. TSha3, OSa15, and KRoc1; CCPIA File Nos. CCPIA# 135 and CCPIA# 204).

The Corpus Christi Police Department (the "department") received a request for all information involving a named individual and the department and the City of Corpus Christi (collectively, the "city") received four requests from three different requestors for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1315 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the first request is broader than the remaining requests because it seeks all information involving the requestor's client. Thus, the city need not release information to the remaining requestors that is not responsive to their requests.

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 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). Upon review, we find the information you have marked is within the scope of section 261.201(a) 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). 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 information you have marked in its entirety 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).

However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law[.]” *Id.* § 261.201(a). We note section 773.0612 of the Health and Safety Code constitutes “applicable state law” in this instance.

The fourth requestor in this instance is a representative of the Texas Department of State Health Services (“DSHS”). The requestor states DSHS seeks the responsive information as part of an investigation of the named individual conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by DSHS. *See* Health & Safety Code § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by DSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [DSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification is considered to have given consent to a representative of [DSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with [DSHS] rules.

Id. § 773.0612. DSHS states the individual at issue is a licensed paramedic with DSHS. Thus, we find the responsive documents are directly related to emergency medical services personnel for purposes of section 773.0612(a). DSHS states it intends to use the responsive information for purposes consistent with chapter 773 of the Health and Safety Code. Therefore, we determine the fourth requestor has a statutory right of access to the responsive information under section 773.0612(a) of the Health and Safety Code. We note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act, such as section 552.108 of the Government Code. *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 exceptions to disclosure under the Act). In addition, a statutory right of access prevails over a claim under common-law privacy. *See Collins v. Tex. Mall, L.P.*, 297 S.W.3d 409,415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and pre-empts common law only when statute directly conflicts with common-law principle); *see also Center Point 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, the city may not withhold any of the responsive information from the fourth requestor under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code.

Consequently, if the city determines DSHS does not seek this information for purposes consistent with the Family Code, the city must withhold the responsive information you have marked in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities). JM-590 at 4-5 (1986); *see also* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive 261.201 information); Open Records Decision Nos. 655 (1997), 650 (1996), 440 at 2 (1986) (predecessor statute). If, however, the city determines DSHS intends to use the responsive information for purposes consistent with the Family Code, the city must generally release the responsive information to the fourth requestor. We note information obtained by DSHS pursuant to section 773.0612(a) is

confidential in the hands of DSHS. *See* Health & Safety Code § 773.0612(b). In that instance, we note sections 552.101, 552.130, and 552.1315 of the Government Code are applicable to portions of the responsive information.²

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “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.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the information we have marked consists of CHRI which the city must generally withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code 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 id.* § 552.130(a). Accordingly, the city must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.1315 of the Government Code states, in pertinent part,

- (a) Information is confidential and excepted from the [Act] if the information identifies an individual as:

² 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 victim of:

(A) an offense under [s]ection 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 43.05, or 43.25, Penal Code; or

(B) an offense that is part of the same criminal episode, as defined by [s]ection 3.01, Penal Code, as an offense described by Paragraph (A)[.]

Id. § 552.1315(a)(1). Section 552.1315(a)(1) pertains to information containing the identifying information of victims of human trafficking, sexual abuse of a child, indecency with a child, sexual assault, aggravated sexual assault, compelling prostitution, and sexual performance by a child. Upon review, we find some of the submitted information contains the identity of a complainant who is an alleged victim of indecency with a child. We find section 552.1315(b) is not applicable in this instance. Therefore, the city must generally withhold the information we have marked under section 552.1315 of the Government Code.

Because section 773.0612 of the Health and Safety Code authorizes the requestor to obtain the submitted information in its entirety and sections 411.083, 552.130 and 552.1315 of the Government Code except from disclosure portions of the submitted information, we find section 773.0612 of the Health and Safety Code is in conflict with sections 411.083, 552.130, and 552.1315 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 id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevails); *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). Section 773.0612 gives a general right of access to all information related to emergency medical services personnel being investigated by DSHS, while section 411.083 of the Government Code specifically protects CHRI, section 552.130 of the Government Code specifically protects motor vehicle record information, and section 552.1315 of the Government Code specifically protects the identifying information of victims of certain specified offenses. Therefore, we find the confidentiality provided by sections 411.083, 552.130 and 552.1315 of the Government Code is more specific than the general right of access provided by section 773.0612 of the Health and Safety Code. We also note sections 411.083, 552.130, and 552.1315 of the Government Code are the later enacted statutes. *See Gov't Code* § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Accordingly, the city must withhold the information we have marked from the fourth requestor under section 552.101 of the Government Code in conjunction with sections 411.083, 552.130, and 552.1315 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the

publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. The reports you have marked contain information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, the first requestor knows the identity of the individual involved in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the individual's common law right of privacy. Accordingly, the city must withhold the information you have marked from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with common law privacy.³

In summary, the city must generally withhold the information you have marked its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if you determine DSHS intends to use the responsive information for purposes consistent with the Family Code, then the city must: (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law; (2) withhold the motor vehicle record information we have marked under section 552.130 of the Government Code; (3) withhold the information we have marked under section 552.1315 of the Government Code; and (4) release the remaining responsive information to the fourth requestor pursuant to section 773.0612 of the Health and Safety Code.⁴ The city must withhold the information you have marked from the first requestor in its entirety under section 552.101 of the Government Code in conjunction with common law privacy.

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.

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴ In this instance, we note the remaining information at issue includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 939433

Enc. Submitted documents

c: Requestors
(w/o enclosures)