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ATTORNEY GENERAL OF TEXAS

April 14, 2022

Mr. Eric Gutierrez
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City of El Paso
PO Box 1890
El Paso, Texas 79950-1890

OR2022-11064

Dear Mr. Gutierrez:

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# 941027 (ORR# 22-1026-11920).

The El Paso Police Department (the "department") received a request for a specified internal affairs investigation. You state the department has released some information. You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We note the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information at issue consists of a completed investigation subject to section 552.022(a)(1). The department must release the information at issue

pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. Although you raise section 552.103 of the Government Code for this information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, pursuant to section 552.022(a)(1), the information at issue may not be withheld under section 552.103. However, because the information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument under this exception for the information at issue. Further, because section 552.101 of the Government Code can make information confidential under the Act, we will also consider your argument under this exception for the information at issue.

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 other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Upon review, we find some of the information at issue consists of law enforcement records used or developed by the department in an investigation of alleged or suspected abuse or neglect of children. *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). Accordingly, we find this information is subject to chapter 261 of the Family Code. In this instance, the requestor is the parent of the child victims listed in the submitted incident report and the requestor is alleged to have committed the suspected abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *See id.* § 261.201(k). Therefore, the department must generally withhold the law enforcement records pertaining to incident report number 21239236 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note the information at issue includes a CR-3 accident report that is subject to chapter 550 of the Transportation Code. Section 550.065 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).

The requestor is a person listed under section 550.065(c). Although the department asserts section 552.108 to withhold the information, 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 access under section 550.065(c) prevails and the department may not withhold the information under section 552.108 of the Government Code. Nevertheless, we must address the conflict between the confidentiality provided under section 261.201(a) of the Family Code and access provided under section 550.065(c) of the Transportation Code.

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.). Section

261.201(a) of the Family Code generally makes records of alleged child abuse or neglect confidential. However, section 550.065(c) specifically provides access only to redacted accident reports of the type at issue. Therefore, we conclude the access provided under section 550.065(c) is more specific than, and prevails over, the confidentiality under section 261.201(a). Consequently, the department must release the submitted CR-3 accident report pursuant to section 550.065(c) of the Transportation Code.

Additionally, we note the information at issue includes a Toxicology Laboratory Report 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 requestor is 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 Toxicology Laboratory Report may not be withheld under section 552.108 of the Government Code. Accordingly, we find the requestor generally has a right of access to this information pursuant to section 724.018 of the Transportation Code.

Next, we note, although the Toxicology Laboratory Report is generally confidential under section 261.201(a) of the Family Code, section 724.018 provides 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. Consequently, the department must release the submitted Toxicology Laboratory Report pursuant to section 724.018 of the Transportation Code.

Therefore, with the exception of the CR-3 accident report, which must be released pursuant to section 550.065(c) of the Transportation Code, and the Toxicology Laboratory Report, which must be released pursuant to section 724.018 of the Transportation Code, the department must withhold the law enforcement records pertaining to incident report number 21239236 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ However, we note the remaining information at issue consists of administrative records. We find the department has failed to establish this information

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

consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Further, the department has not demonstrated the remaining information at issue consists of a report of child abuse or neglect or was used or developed in an investigation under chapter 261. *See* Fam. Code § 261.001(1), (4). Therefore, we conclude section 261.201 is not applicable to the remaining administrative records, and the department may not withhold them under section 552.101 of the Government Code on that basis.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, in this instance, you inform us the remaining administrative records relate to a pending criminal case that is being investigated by the department. Based upon this representation, we conclude release of the remaining information at issue will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the department may withhold the remaining administrative records under section 552.108(a)(1) of the Government Code.

In summary, the department must release the submitted CR-3 accident report pursuant to section 550.065(c) of the Transportation Code. The department must release the submitted Toxicology Laboratory Report pursuant to section 724.018 of the Transportation Code. The department must withhold the remaining law enforcement records pertaining to incident report number 21239236 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department may withhold the remaining administrative records under section 552.108(a)(1) of the Government 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.

² We note the requestor has a right of access beyond that of the general public to the information being released. If the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/be

Ref: ID# 941027

Enc. Submitted documents

c: Requestor
(w/o enclosures)