



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2022

Ms. Lauren Azopardi
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-20302

Dear Ms. Azopardi:

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# 958743 (PIR No. E002655-042022).

The Fort Worth Police Department (the "department") received a request for all reports pertaining to two named individuals during a stated period of time, including two specified reports. You state the department will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. This section encompasses 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. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, requires the department to compile unspecified law enforcement records concerning the individuals named in the present request. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. Accordingly, to the extent the department maintains unspecified law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the request also seeks information pertaining to two specified incidents. Therefore, this portion of the request does not require the department to compile a named individual's criminal history or implicate the privacy interests of the named individuals, and the department may not withhold such information under section 552.101 as a compilation of criminal history. Thus, we will address whether this information is otherwise excepted under the Act.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

[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 find the information pertaining to report numbers 220026630 and 220029751 was used or developed in investigations of alleged or suspected child abuse or neglect conducted by the department. *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). Thus, we find this information is subject to chapter 261 of the Family Code. However, we note the requestor is an investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services ("DFPS"). Section 261.105(a) provides "[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to [DFPS]." *See id.* § 261.105(a). In this instance, report numbers 220026630 and 220029751 indicate the person suspected of child abuse or neglect was responsible for the child's care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child's care, custody, or welfare includes a member of the child's family or household as defined by chapter 71 of the Family Code). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply in this instance. *See Attorney General Opinion No. GA-0879 (2011)* (law enforcement agency is required

to furnish information about alleged child abuse or neglect by person responsible for child's care, custody, or welfare to DFPS). Therefore, the department may not withhold any portion of the information pertaining to report numbers 220026630 and 220029751 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We also note a specific statutory right of access prevails over general exceptions to disclosure under the Act, such as section 552.108 of the Government Code. *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). Therefore, the department may not withhold any portion of the information pertaining to report numbers 220026630 and 220029751 under section 552.108 of the Government Code. Accordingly, the department must generally release the information pertaining to report numbers 220026630 and 220029751 to this requestor pursuant to 261.105 of the Family Code.

Additionally, the requestor may also have a right of access to some information that does not consist of reports that were used or developed in investigations of alleged or suspected child abuse, to the extent such information exists. Section 411.114(a) of the Government Code states, in pertinent part:

(2) The [DFPS] shall obtain from the [Department of Public Safety ("DPS")] criminal history record information ["CHRI"] maintained by [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, CHRI consists of “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.” *See id.* § 411.082(2). Thus, these provisions may grant the DFPS investigator a right of access to CHRI in the information at issue, to the extent it exists. We note 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 preempts common law only when statute directly conflicts with common-law principle); *see also 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). We also note a specific statutory right of access prevails over general exceptions to disclosure under the Act, such as section 552.108 of the Government Code. *See, e.g.*, ORDs 613 at 4, 451 at 4. We understand the subject of the information at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child. Thus, the requestor is authorized to obtain CHRI regarding that individual and the department must release it to this requestor. *See id.* § 411.114.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.¹ *See id.* § 552.130. As previously noted, the requestor generally has a right of access to the information pertaining to report numbers 220026630 and 220029751 under section 261.105(a) of the Family Code. We also note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. However, because section 552.130 of the Government Code has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 261.105 of the Family Code and the confidentiality provided by section 552.130 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* Gov't Code § 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 prevail); *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); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”). Although section 261.105(a) generally allows DFPS access to reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare, section 552.130 specifically protects motor vehicle record information. Thus, we conclude the confidentiality of section 552.130 prevails over the requestor's access under section 261.105, and section 261.105(a) does not provide DFPS access to

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).

information subject to section 552.130. Accordingly, notwithstanding the provision of section 261.105(a) of the Family Code, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting either of the named individuals as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy; however, to the extent it exists, the department must release CHRI to this requestor pursuant to section 411.114 of the Government Code. The department must generally release the information pertaining to report numbers 220026630 and 220029751 to this requestor pursuant to section 261.105 of the Government Code; however, in releasing such information, the department must withhold the motor vehicle record information we have marked under section 552.130 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.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 958743

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As noted above, the requestor has a right of access to some of the information being released, in this instance. *See id.* § 411.114; Fam. Code § 261.105. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor. Additionally, we note the information being released 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. Gov't Code § 552.147(b).