



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2022

Ms. Kathy Barley
Open Records Clerk
Mabank Police Department
129 East Market
Mabank, Texas 75147

OR2022-21635

Dear Ms. Barley:

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# 961470.

The Mabank Police Department (the "department") received three requests from different requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.1085 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The department received the first request for information on December 21, 2021. The department does not inform us it was closed for any business days between December 21, 2021, and January 4, 2022.

Accordingly, the department was required to provide the information required by section 552.301(b) for the first request by January 4, 2022. Moreover, the department was required to provide the information required by section 552.301(e) for the first request by January 11, 2022. The department received the second request for information on April 5, 2022. The department does not inform us it was closed for any business days between April 5, 2022, and April 19, 2022. Accordingly, the department was required to provide the information required by section 552.301(b) for the second request by April 19, 2022. Moreover, the department was required to provide the information required by section 552.301(e) for the second request by April 26, 2022. The department received the third request for information on April 8, 2022. The department does not inform us it was closed for any business days between April 8, 2022, and April 22, 2022. Accordingly, the department was required to provide the information required by section 552.301(b) by for the third request by April 22, 2022. Moreover, the department was required to provide the information required by section 552.301(e) for the third request by April 29, 2022. However, the envelope in which the department provided the information responsive to all three requests required by sections 552.301(b) and 552.301(e) was postmarked May 11, 2022. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to all three requests for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The department claims sections 552.101, 552.107, 552.108 and 552.1085 of the Government Code for the submitted information. Because sections 552.101, 552.107, and 552.1085 can provide compelling reasons to overcome the presumption of openness, we will address the department's arguments under these exceptions against release of the submitted information. However, we find the department has failed to establish a compelling reason to address its remaining claimed exception.

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. This section encompasses information protected by section 261.201 of the Family Code, which provides, in 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.

Fam. Code § 261.201(a). Upon review, the submitted information was used or developed in an investigation 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the submitted information 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 submitted information includes a CR-3 accident report. Section 552.101 of the Government Code also encompasses information subject to section 550.065 of the Transportation Code, which 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. Transp. Code §§ 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 may 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 first requestor is a person listed under section 560.065(c). *See id.* § 550.065(c)(4)(G)-(H). Thus, section 550.065(c) generally requires the accident report to be released to this requestor. However, we note the second and third requestors are not persons listed under section 550.065(c). Therefore, the submitted accident report is confidential under section 550.065(b) with respect to the second and third requestors, and the department must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the department to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the second and third requestors have a right of access to the redacted accident report under section 550.065(c-1). Therefore, we must address the conflict between the confidentiality provided under section 261.201 of the Family Code and the rights of access provided under sections 550.065(c) and 550.065(c-1) of the Transportation Code for the accident report. 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 generally pertains to all records of alleged child abuse or neglect, sections 550.065(c) and 550.065(c-1) specifically pertain to accident reports. Thus, we find section 550.065 is more specific than, and prevails over, section 261.201. Therefore, the department must release the CR-3 accident report in its entirety to the first requestor pursuant to section 550.065(c) of the Transportation Code and must release the redacted CR-3 accident report to the second and third requestors pursuant to section 550.065(c-1) of the Transportation Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹

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,

Pearlie Gault
Assistant Attorney General
Open Records Division

PG/mo

Ref: ID# 961470

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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