



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 29, 2022

Mr. Kevin Bailey  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2022-26184

Dear Mr. Bailey:

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# 968561 (Request ID# M037418-060122).

The City of Midland (the "city") received a request for a specified incident report. 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 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 other statutes, such as 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 agree the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the city's police department. *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). Accordingly, we find this information is subject to chapter 261 of the Family Code.

In this instance, however, the requestor is a representative 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). We note the persons suspected of child abuse or neglect in the submitted report were 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). Thus, section 261.105(a) is applicable, and the city may not withhold the information at issue from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *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). Additionally, although the city asserts the submitted information is subject to section 552.101 in conjunction with common-law privacy and section 552.108 of the Government Code, a statutory right of access prevails over the Act's general exceptions to public disclosure and 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); 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); *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). Therefore, the city must generally release the submitted information pursuant to section 261.105(a) of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part, the following:

(b) Except as provided by Subsection (c), law enforcement records

concerning a child and information concerning a child that are stored by electronic means or otherwise from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we agree the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the submitted information is confidential under section 58.008(b) of the Family Code. Therefore, we must address the conflict between the requestor’s right of access pursuant to section 261.105(a) of the Family Code and the confidentiality provided by section 58.008(b) of the Family Code.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *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”). In this instance, section 261.105(a) of the Family Code gives a specific type of requestor, DFPS, access to particular information, 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. Conversely, section 58.008(b) of the Family Code prohibits any member of the public from obtaining any and all law enforcement records of any incident in which a juvenile is engaged in delinquent conduct or conduct indicating a need for supervision occurring before, on, or after September 1, 2017. *See* Fam. Code § 58.008(b). Accordingly, we find the statutory right of access granted to the requestor by section 261.105(a) of the Family

Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code. Therefore, the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

We note portions of the submitted information are subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 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. *See Gov't Code § 552.130*. Accordingly, the city must generally withhold the driver's license numbers and states of issuance within the submitted information under section 552.130 of the Government Code.

As previously noted, the requestor generally has a right of access to the submitted information under section 261.105(a) of the Family Code. As previously stated, 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 Horizon/CMS Healthcare Corp.*, 34 S.W.3d at 901; *Cuellar*, 521 S.W.2d 277. 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 information subject to section 552.130. Accordingly, notwithstanding the provision of section 261.105(a) of the Family Code, the city must withhold the driver's license numbers and states of issuance within the submitted information under section 552.130 of the Government Code. The city must release the remaining information to this requestor pursuant to section 261.105(a) of the Family Code.<sup>2</sup>

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.

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<sup>1</sup> 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)*.

<sup>2</sup> As noted above, the requestor has a special right of access to the information being released. *See Fam. Code § 261.105(a)*. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city 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,

Pearlie Gault  
Assistant Attorney General  
Open Records Division

PG/mo

Ref: ID# 968561

Enc. Submitted documents

c: Requestor  
(w/o enclosures)