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ATTORNEY GENERAL OF TEXAS

September 6, 2022

Ms. Amanda Davis
Counsel for City of McKinney
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2022-27023

Dear Ms. Davis:

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# 970958 (McKinney ID No. P23581).

The City of McKinney (the "city"), which you represent, received a request for information pertaining to a named individual during a specified period of time. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The requestor is a representative of the Adult Protective Services Division ("APS") of the Texas Department of Family and Protective Services (the "DFPS"). Under chapter 48 of the Human Resources Code, APS's duties include the investigation of abuse, neglect, or exploitation in the provision of services to a person with a disability. *See* Hum. Res. Code §§48.151, .152. Section 48.154(a) of the Human Resources Code provides as follows:

[The DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of [DFPS]'s or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly person or person with a disability. A person, agency, or institution that has a record or document that [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to [DFPS] or state agency that requested the record or document.

Id. § 48.154(a). The requestor states APS seeks the records at issue as part of an investigation. Consequently, we conclude APS requires this information in order to perform its duties under chapter 48 of the Human Resources Code, which include investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See id.* §§ 48.151, .152, .154(a). Thus, the requestor has a right of access to the information pursuant to section 48.154. We note a statutory right of access prevails over 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); *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). Accordingly, the city may not withhold any portion of the submitted information from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the submitted information is subject to section 552.130 of the Government Code.¹ Section 552.130 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 Gov't Code* § 552.130. Accordingly, the city must generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Because section 552.130 of the Government Code has its own access provisions, section 552.130 is not a general exception under the Act. *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 exception to disclosure under the Act). Therefore, we must address the conflict between the access provided under section 48.154 of the Human Resources Code and the confidentiality provided under section 552.130 of the Government Code. Where information falls within both a general and specific provision of law, the specific provision prevails over the general. *See Gov't Code* § 311.026; *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). Although section 48.154 generally provides DFPS representatives with access to information necessary to perform their duties under chapter 48 of the Human Resources Code, section 552.130 of the Government Code is specifically applicable only to motor vehicle record information. Thus, we find section 552.130 of the Government Code is more specific than the general right of access under section 48.154. Moreover, the statutory predecessor to section 48.154, former section 48.0835 of the Human Resources Code, was enacted prior to section 552.130 of the Government Code. *See Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580* (enacting Gov't Code § 552.130); *Act of May 24, 1993, 73d Leg., R.S., ch. 651, § 1, 1993 Tex. Gen. Laws 2436* (enacting former Hum. Res. Code § 48.0835). Consequently, we find the confidentiality provided by section 552.130 prevails over the right of access provided by

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).

section 48.154. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information to this requestor pursuant to section 48.154 of the Human Resources 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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/eb

Ref: ID# 970958

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² Because the requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.