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ATTORNEY GENERAL OF TEXAS

October 19, 2022

Ms. Andrea D. Russell
Counsel for the City of Weatherford
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-32197

Dear Ms. Russell:

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# 979371 (ORR# W003661-072622).

The City of Weatherford (the "city"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1315 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 statutes that make information confidential, such as section 261.201 of the Family Code, which 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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect under chapter 261. *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 chapter 261). Thus, the submitted information is subject to section 261.201. As you do not indicate the city has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201(a) of the Family Code.

However, section 261.201 provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Subchapter E of chapter 264 of the Family Code concerns the establishment and duties of children’s advocacy centers. *See id.* §§ 264.401-.411. Section 264.405 of the Family Code directs children’s advocacy centers to provide services for victims of child abuse and their families. *Id.* § 264.405. Furthermore, section 264.408(c) of the Family Code provides “a law enforcement agency . . . may share with a [children’s advocacy] center information that is confidential under section 261.201 as needed to provide services” under chapter 264 of the Family Code. *Id.* § 264.408(c).

In this instance, the requestor is a representative of the Children’s Advocacy Center of Parker County. However, the requestor does not state whether the requested information is sought for the purposes of providing services under chapter 264 of the Family Code. Therefore, we must rule conditionally. If you determine the information subject to section 261.201 is not needed to provide services under chapter 264, then the city may not release the information on that ground, and the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ If, however, you determine the information at issue is needed to provide services under chapter 264 of the Family Code, then the city generally has the discretion to release the information at issue to this requestor pursuant to section 264.408(c). We note information shared with or provided to the CAC under section 264.408(c) retains its confidentiality under section 261.201(a) of the Family Code. *See id.* We note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act, such as section 552.108 of the Government Code. *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 exceptions to disclosure under the Act).* In addition, 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 pre-empts common law only when statute directly conflicts with common-law principle); *see also Center Point Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there

¹ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

is no conflicting or controlling statutory law). Therefore, the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code.

Section 552.1315(a)(2) of the Government Code reads as follows:

(a) Information is confidential and excepted from the [Act] if the information identifies an individual as:

...

(2) a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed.

Gov't Code § 552.1315(a)(2). Upon review, we agree section 552.1315(a)(2) is applicable to some of the submitted information. Because section 552.1315 of the Government Code has its own access provisions, we conclude this section is not a general exception under the Act. Thus, if you determine the information at issue is needed to provide services under chapter 264 of the Family Code, then there is a conflict between the confidentiality provision found in section 552.1315(a)(2) of the Government Code and the access provided by section 264.408(c) of the Family Code.

Where information falls within both general and specific statutory provisions, the specific provision prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See id.* § 311.026(b); *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). Section 552.1315(a)(2) protects the identifying information of a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed. However, section 264.408(c) gives a specific type of requestor, a children's advocacy center, access to particular information, records of alleged or suspected child abuse or neglect. Upon review, we find the access granted to a children's advocacy center by section 264.408(c) is more specific than the confidentiality provided by section 552.1315. Therefore, because section 264.408(c) is the more specific statute, we find section 264.408(c) prevails over section 552.1315. Accordingly, the city may not withhold any portion of the submitted information under section 552.1315 in this instance.

In summary, if you determine the submitted information is not needed to provide services under chapter 264 of the Family Code, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If you determine the information is needed to provide services under chapter 264 of the Family Code, then the city has the discretion to release the submitted information in its entirety to this requestor pursuant to section 264.408(c) of the Family Code.²

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.

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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/eb

Ref: ID# 979371

Enc. Submitted documents

c: Requestor
(w/o enclosures)