



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2022

Ms. Brittany Croce
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2022-33729

Dear Ms. Croce:

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# 981094.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified investigation involving a named individual. We understand the sheriff's office will withhold social security numbers under section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.1315, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes police officers' body worn camera recordings and photographs from police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661 provides, in relevant part, as follows:

- (a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.² However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

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 information protected by 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 find the remaining information is within the scope of section 261.201(a) of the Family Code. *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). As you do not indicate the sheriff’s office has adopted a rule that

² As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must generally withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, section 261.201(a) also provides that 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). We note section 773.0612 of the Health and Safety Code constitutes "applicable state law" in this instance.

The requestor in this instance is a representative of the Texas Department of State Health Services ("DSHS"). The requestor states DSHS seeks the responsive information as part of an investigation of the named individual conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by DSHS. *See* Health & Safety Code § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by DSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [DSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification is considered to have given consent to a representative of [DSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with [DSHS] rules.

Id. § 773.0612. DSHS states the individual at issue is a licensed emergency medical technician with DSHS. Thus, we find the responsive documents are directly related to emergency medical services personnel for purposes of section 773.0612(a). DSHS states it intends to use the responsive information for purposes consistent with chapter 773 of the Health and Safety Code. Therefore, we determine the requestor has a statutory right of access to the responsive information under section 773.0612(a) of the Health and Safety Code. We note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act, such as section 552.152 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*

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 is no conflicting or controlling statutory law). Therefore, the sheriff's office may not withhold any of the remaining information from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.152 of the Government Code.

Consequently, if the sheriff's office determines DSHS does not seek this information for purposes consistent with the Family Code, the sheriff's office must withhold the remaining information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities). JM-590 at 4-5 (1986); *see also* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive 261.201 information); Open Records Decision Nos. 655 (1997), 650 (1996), 440 at 2 (1986) (predecessor statute). If, however, the sheriff's office determines DSHS intends to use the information at issue for purposes consistent with the Family Code, the sheriff's office must generally release the information at issue to the requestor. We note information obtained by DSHS pursuant to section 773.0612(a) is confidential in the hands of DSHS. *See* Health & Safety Code § 773.0612(b). In that instance, we note sections 552.101, 552.130, and 552.1315 of the Government Code are applicable to portions of the responsive information.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "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." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note Federal Bureau of Investigation ("FBI") numbers

constitute CHRI generated by the FBI. Upon review, we find the information we marked consists of CHRI which the sheriff's office must generally withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

Section 552.130 of the Government Code 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 id.* § 552.130(a). Accordingly, the sheriff's office must generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.1315 of the Government Code states, in pertinent part,

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

(1) a victim of:

(A) an offense under [s]ection 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 43.05, or 43.25, Penal Code; or

(B) an offense that is part of the same criminal episode, as defined by [s]ection 3.01, Penal Code, as an offense described by Paragraph (A)[.]

Id. § 552.1315(a)(1). Section 552.1315(a)(1) pertains to information containing the identifying information of victims of human trafficking, sexual abuse of a child, indecency with a child, sexual assault, aggravated sexual assault, compelling prostitution, and sexual performance by a child. Upon review, we find some of the remaining information contains the identity of a complainant who is an alleged victim of indecency with a child. We find section 552.1315(b) is not applicable in this instance. Therefore, the sheriff's office must generally withhold the information we marked and indicated under section 552.1315 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 560.003 of the Government Code, which provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the submitted fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff's office must generally withhold the marked fingerprints and palm prints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Because section 773.0612 of the Health and Safety Code authorizes the requestor to obtain the remaining information in its entirety and sections 411.083, 552.130, 552.1315, and 560.003 of the Government Code except from disclosure portions of the information at issue, we find section 773.0612 of the Health and Safety Code is in conflict with sections 411.083, 552.130, 552.1315, and 560.003 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 id.* § 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 prevails); *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 773.0612 gives a general right of access to all information related to emergency medical services personnel being investigated by DSHS, while section 411.083 of the Government Code specifically protects CHRI, section 552.130 of the Government Code specifically protects motor vehicle record information, section 552.1315 of the Government Code specifically protects the identifying information of victims of certain specified offenses, and section 560.003 specifically protects fingerprints. Therefore, we find the confidentiality provided by sections 411.083, 552.130, 552.1315, and 560.003 of the Government Code is more specific than the general right of access provided by section 773.0612 of the Health and Safety Code. We also note sections 411.083, 552.130, 552.1315, and 560.003 of the Government Code are the later enacted statutes. *See Gov't Code* § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Accordingly, the sheriff's office must withhold the information you marked and the information we marked and indicated from the requestor under section 552.101 of the Government Code in conjunction with sections 411.083, 552.130, 552.1315, and 560.003 of the Government Code.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The sheriff's office must generally withhold the remaining information its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if you determine DSHS intends to use the remaining information for purposes consistent with the Family Code, then the sheriff's office must: (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law; (2) withhold the motor vehicle record information we marked under section 552.130 of the Government Code; (3) withhold the information we marked and indicated under section 552.1315 of the Government Code; (4) must withhold the marked fingerprints and palm prints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; and (5) release the remaining information to the requestor pursuant to section 773.0612 of the Health and Safety Code.

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 981094

Enc. Submitted documents

c: Requestor
(w/o enclosures)