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ATTORNEY GENERAL OF TEXAS

December 12, 2022

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

OR2022-38437

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# 989211 (ORR# 22-0778).

The McKinney Police Department (the "department"), which you represent, received a request for a specified incident report. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception 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."¹ Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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 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

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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 an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the submitted information is generally confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, the requestor is with the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) of the Family Code 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). Although the department asserts the submitted information is excepted from disclosure under section 552.108 of the Government Code, a statutory right of access prevails over the Act’s general exceptions to public disclosure. *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). We are unable to determine whether the offender at issue was responsible for the care, custody, or welfare of any of the child victims. *See id.* § 261.001(5)(B) (person responsible for child’s care, custody, or welfare includes a member of child’s family or household as defined by Family Code chapter 71). Therefore, we must rule conditionally. If the offender at issue in the submitted report was responsible for the care, custody, or welfare of any of the child victims at issue, then section 261.105(a) is applicable and the confidentiality of section 261.201(a) does not apply. *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). If the offender was not responsible for the care, custody, or welfare of any of the child victims at issue, then the department may not release the submitted information pursuant to section 261.105(a). Nevertheless, section 261.201(a) of the Family Code provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *See id.* Chapter 411 of the Government Code constitutes “applicable state law” in this instance.

Section 411.114(a) of the Government Code states, in pertinent part, the following:

(2) [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, CHRI consists of "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." *See id.* § 411.082(2). The requestor does not state whether the offender at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child. Thus, we must rule conditionally. If the offender is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release the CHRI regarding that individual pursuant to section 411.114 of the Government Code. If the offender is not an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department may not release the CHRI at issue on that ground.

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 Gov't Code § 552.130.* The department must generally withhold the submitted driver's license, license plate, and vehicle identification numbers and issuing states and type under section 552.130 of the Government Code. Because section 552.130 has its own access provisions, it is not a general exception under the Act. Thus, we must address the conflict between section 261.105 of the Family Code and 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 Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *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)). While section 261.105(a) provides DFPS with general access to reports received by law enforcement agencies 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 from

disclosure. Thus, we find the confidentiality provided by section 552.130 is more specific than the right of access provided by section 261.105(a). Accordingly, the department must withhold the submitted driver's license, license plate, and vehicle identification numbers and issuing states and type under section 552.130 of the Government Code, regardless of whether section 261.105(a) of the Family Code is applicable.

In summary, if the offender at issue in the submitted report was responsible for the care, custody, or welfare of any of the child victims at issue, then the department must withhold the submitted driver's license, license plate, and vehicle identification numbers and issuing states and type under section 552.130 of the Government Code, but release the remaining information pursuant to section 261.105(a) of the Family Code. If the offender was not responsible for the care, custody, or welfare of any of the child victims and is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release the offender's CHRI pursuant to section 411.114 of the Government Code, but withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the offender neither was responsible for the care, custody, or welfare of any of the child victims nor is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department 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.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/pt

Ref: ID# 989211

Enc. Submitted documents

c: Requestor
(w/o enclosures)