



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2009

Mr. Vic Ramirez  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR2009-06328

Dear Mr. Ramirez:

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# 342669.

The Lower Colorado River Authority (the "authority") received a request for all information, including several specified types of information, regarding a specified accident. You state the authority has no information responsive to one of the specified types of information requested.<sup>1</sup> You claim the requested investigation information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. You also state the authority notified an interested third party of the request and of its right to submit arguments to this office as to why the requested investigation information should not be released. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released). As of the date of this decision, this office has received no

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

correspondence from the interested third party. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you indicate a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-04765 (2009). In that ruling, we concluded the authority must withhold the information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the authority must continue to rely on that ruling as a previous determination and withhold the previously ruled upon information in accordance with Open Records Letter No. 2009-04765. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>3</sup> Gov't Code § 552.101. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides:

(a) The 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.

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<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>3</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Fam. Code § 261.201(a). We note the requested investigation records were used or developed in an investigation by the authority's police department of alleged injuries to children. *See id.* § 261.001(1)(C) (definition of child abuse includes "physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child"); *see also id.* § 101.003(a) (defining "child" for purposes of this section as 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). Based on our review, we find the requested information is within the scope of section 261.201 of the Family Code. You have not indicated the authority's police department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the requested information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the information contains CR-3 accident reports that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 also encompasses chapter 550 of the Transportation Code. Section 550.065(b) states that, except as provided by subsection (c), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the authority with the date of the accident, the name of a person involved in the accident, and the specific location of the accident pursuant to section 550.065(c)(4).

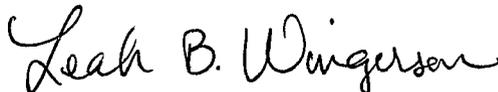
Although the requested investigation records are generally confidential under section 261.201 of the Family Code, section 550.065(c)(4) requires the accident reports to be released to the requestor because he supplied the required information. Therefore, there is a conflict between the provisions of section 261.201 of the Family Code and section 550.065(c)(4) of the Transportation Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 261.201 generally pertains to all records of alleged child abuse, section 550.065(c)(4) specifically pertains to accident reports. Therefore, in this instance, section 550.065 governs the release of the marked accident reports. Additionally, although you claim the marked CR-3 reports are excepted from disclosure under sections 552.103 and 552.108 of the Government Code, we note, as a general rule, statutes governing the release of specific information prevail over the general exceptions to

disclosure found in the Act. *See* Attorney General Opinion DM-146 (1992); *see also* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 3 (1986). Therefore, the authority must release the marked CR-3 accident reports pursuant to section 550.065(c)(4) of the Transportation Code. The remaining information must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code.<sup>4</sup> As our ruling is dispositive, we need not address your arguments against disclosure.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 342669

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the requestor, as an attorney for one of the children who are the subject of reported abuse or neglect, may have a right of access to certain abuse and neglect records maintained by the Texas Department of Family and Protective Services ("DFPS"). Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, "shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure." Fam. Code § 261.201(g).