



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2013

Ms. Kara S. Comte
Assistant District Attorney
Brazos County District Attorney
300 East 26th Street, Suite 310
Bryan, Texas 77803

OR2013-00190

Dear Ms. Comte:

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# 475331.

The Brazos County District Attorney's Office (the "district attorney's office") received a request for the entire prosecution file for a specific case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be

¹We 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 those submitted to this office.

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). You state the submitted information was used or developed in an investigation of alleged injury to a child. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). You have not indicated the district attorney’s office has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

We note, however, some of the submitted information contains the fingerprints of the requestor’s client. Section 552.101 of the Government Code also encompasses 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). However, section 560.002 of the Government Code provides, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, we find a person or the person’s authorized representative has a right of access under section 560.002(1)(A) to that person’s biometric information. Because the fingerprints in this case are those of the requestor’s client, they must be released to this requestor pursuant to section 560.002(1)(A). *See Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning himself). Thus, there is a conflict between the confidentiality mandated under section 261.201 of the Family Code and the right of access provided to this requestor under section 560.002 of the Government Code.

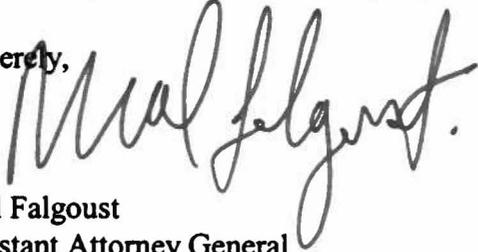
Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Gov’t Code § 311.026(b); 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, we find section 261.201 of the Family Code generally applies to information used or developed

in an investigation of alleged child abuse or child neglect. Section 560.002, however, applies specifically to biometric identifier information. Accordingly, we find the right of access provided to this requestor under section 560.002 prevails over the general confidentiality of section 261.201 of the Family Code. Although you also seek to withhold the fingerprints under sections 552.103 and 552.108, we note these are general exceptions to disclosure, and a specific right of access prevails over the Act's general exceptions. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). Thus, the district attorney's office must release the fingerprints pertaining to the requestor's client,² and it must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 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 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, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 475331

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to this information. Accordingly, if the district attorney's office receives another request for this information from a different requestor, it must again seek a ruling from this office.