



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2013

Ms. Lee Ann Rimer
Police Attorney/Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2013-15617

Dear Ms. Rimer:

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# 499062.

The Odessa Police Department (the "department") received a request for eight categories of information pertaining to a specified traffic accident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information includes documents that were filed with a court. Section 552.022 of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly made confidential under the Act or other law. *Id.* § 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the court-filed documents may not be withheld under section 552.108. However, because section 552.101 of the Government Code makes information confidential

under the Act, we will address its applicability to the court-filed documents subject to section 522.022(a)(17), along with the remaining submitted 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides:

(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 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 an investigation under section 261.201(a) of the Family Code. *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 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). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Therefore, we find the submitted information is confidential pursuant to section 261.201 of the Family Code.

We note, however, the submitted information contains a CR-3 crash report completed under chapter 550 of the Transportation Code. Section 550.065(b) provides that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Transp. Code § 550.065. Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has provided the department with the required information. Although the requested

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

investigation records are generally confidential under section 261.201 of the Family Code, section 550.065(c)(4) requires the crash report to be released to the requestor because he supplied the required information.

Therefore, we must address the conflict between the confidentiality provided under section 261.201 of the Family Code and the access provided under 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 or neglect, section 550.065(c)(4) specifically pertains to crash reports. Therefore, we find section 550.065 is more specific than section 261.201. Additionally, although you seek to withhold this information under section 552.108 of the Government Code, 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 at 3 (1992); *see also* 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). Therefore, the department must release the CR-3 crash report, which we have marked, to the requestor pursuant to section 550.065(c)(4) of the Transportation Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, the department must release the CR-3 crash report we have marked to the requestor pursuant to section 550.065(c)(4) of the Transportation Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²As our ruling is dispositive, we need not address your argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Wheelus", written in a cursive style.

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 499062

Enc. Submitted documents

c: Requestor
(w/o enclosures)