



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2015

Mr. Gregory A. Shumpert
Counsel for the City of Terrell
Shumpert Law Offices, P.L.L.C.
302 West Nash Street
Terrell, Texas 75160

OR2015-06934

Dear Mr. Shumpert:

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# 561057.

The Terrell Police Department (the "department"), which you represent, received two requests for information pertaining to a specified incident. 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.

Initially, we note the submitted information includes court-filed documents that are subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the marked documents under section 552.108 of the Government Code. However, because section 552.101 of the Government Code can make information confidential for the purposes

of section 552.022, we will address its applicability to the information at issue.¹ We will also consider your argument under section 552.108 for the information not subject to section 552.022.

Section 552.101 of the Government Code exempts from public 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 other statutes. Section 261.201 of the Family Code provides, in part, as follows:

(a) [T]he 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.

Fam. Code § 261.201(a). We find the submitted information relates to an investigation of alleged or suspected child abuse or neglect. Upon review, we find this information is subject to chapter 261 of the Family Code. *See 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), 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is confidential pursuant to section 261.201 of the Family Code, and the department must generally withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the submitted information contains a CR-3 accident report completed under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). However, section 550.065(c)(4) provides for release of accident reports to a person who provides two

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 Nos. 481 (1987), 480 (1987), 470 (1987).

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). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this instance, the requestors have provided the required information pursuant to section 550.065(c)(4). Thus, although the submitted information is generally confidential under section 261.201 of the Family Code, section 550.065(c)(4) requires the accident report to be released to these requestors because they supplied the required information.

Therefore, we must address the conflict between the confidentiality provided under section 261.201 of the Family Code and the right of 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 accident reports. Therefore, we find section 550.065 is more specific than, and prevails over, section 261.201. We note although you also seek to withhold the CR-3 accident report under section 552.108 of the Government Code, a statutory right of access generally prevails over the exceptions to public disclosure under 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 exception to disclosure under the Act). Thus, the department may not withhold any portion of the CR-3 accident report under section 552.108. Therefore, the department must release the CR-3 accident report in its entirety to these requestors 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 remaining argument against disclosure of the submitted information.

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

Sincerely,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/som

Ref: ID# 561057

Enc. Submitted documents

c: Requestor
(w/o enclosures)