



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2015

Mr. Frank J. Ford
Assistant Criminal District Attorney
Civil Section
Bexar County Criminal District Attorney
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2015-08941

Dear Mr. Ford:

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# 562809.

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to two specified court cases.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

¹ We note you sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

Id. § 261.201(a). The submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 of Family Code). Thus, the information is confidential under section 261.201(a). As you do not indicate the district attorney’s office has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Thus, we find the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code.

However, we note the submitted information contains the fingerprint 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].” Gov’t Code § 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[.]” *See id.* § 560.002(1)(A). Thus, as the attorney for the individual whose fingerprint is at issue, the requestor has a right of access to her client’s fingerprint under section 560.002 of the Government Code. *See id.* § 560.002; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves or individuals they represent).

However, there is a conflict between the confidentiality mandated under section 261.201(a) 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 confidentiality of section 261.201 of the Family Code. Thus, the district attorney's office must release the fingerprint of the requestor's client, which we have marked, pursuant to section 560.002 of the Government Code, but it must withhold the remaining information 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 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 562809

Enc. Submitted documents

c: Requestor
(w/o enclosures)