



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 26, 2015

Ms. Linda Pemberton
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2015-10125

Dear Ms. Pemberton:

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# 564726 (ID # W015727).

The Killeen Police Department (the "department") received a request for family violence reports pertaining to specified address during a specified period of time. The department claims portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 section 261.201(a) of the Family Code, which provides as follows:

[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). We note call for service report number 1807043 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Accordingly, we find report number 1807043 is within the scope of section 261.201(a). Thus, this information is generally confidential under section 261.201(a) of the Family Code.

The submitted information indicates the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services (“DFPS”) in accordance with chapter 42 of the Human Resources Code, and the requested information pertains to a current foster home. *See generally* Hum. Res. Code ch. 42. Section 261.201 of the Family Code provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Section 2447(7) of title 40 of the Texas Administrative Code constitutes such “applicable state law.”

A child-placing agency must complete a foster home screening prior to verifying a foster home. *See* 40 T.A.C. § 749.2445(a); Hum. Res. Code § 42.042(a), (h)-(h-1) (DFPS shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies). Further, child-placing agencies are required to evaluate a foster home for compliance with licensing rules in certain instances. *See* 40 T.A.C. § 749.2801. Pursuant to section 749.2471, verifying a foster home includes completing and documenting the requirements set out in section 749.2447 of title 40 of the Texas Administrative Code. 40 T.A.C. § 749.2471(1); *cf.* Hum. Res. Code § 42.0561 (providing in part that “[b]efore . . . a child-placing agency may issue a verification certificate for an agency foster home, the . . . child-placing agency must obtain information relating to each family violence report at the applicant’s residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.”). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following:*

(A) *Obtain service call information from the appropriate law enforcement agency for the prospective foster parents’ addresses for*

the past two years. Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

...

(C) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

Id. § 749.2447(7)(A), (C) (emphasis added); *see id.* §§ 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, sections 749.2447(7) and 749.2471 of title 40 of the Texas Administrative Code require a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of current foster parents from appropriate law enforcement agencies. *See id.* Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a current foster home pursuant to the requirements of section 749.2471.

In this instance, the requestor is seeking family violence reports involving current foster parents at their residences for the previous two years. Accordingly, we conclude the requestor has a right of access to the information at issue pursuant to sections 749.2447(7) and 749.2471 of title 40 of the Texas Administrative Code. We note a specific statutory right of access overcomes the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, as noted above, section 261.201(a) states any release must be for purposes consistent with the Family Code. *See Fam. Code* § 261.201(a). We find release of the information at issue to this requestor is for a purpose consistent with the Family Code. Therefore, pursuant to sections 749.2447(7) and 749.2471 of title 40 of the Texas Administrative Code, the department may not withhold call for service report number 1807043 under section 552.101 in conjunction with section 261.201.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See id.* § 58.007(c). Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). Upon review, we find call for service report number 1690325 involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, this report is generally confidential under section 58.007(c) of the Family Code.

As noted above, the requestor has a right of access to the information at issue pursuant to sections 749.2447(7) and 749.2471 of title 40 of the Texas Administrative Code. Therefore, we must address the conflict between the access provided under sections 749.2447 and 749.2471 and the confidentiality provided under section 58.007(c) of the Family Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See Gov’t Code* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevails); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). While section 58.007(c) generally makes juvenile law enforcement records confidential with respect to the general public, sections 749.2447(7) and 749.2471 requires release of information for a specified address and time period to a specified type of requestor in a certain circumstance—a child-placing agency verifying a foster home at that address. *See Fam. Code* § 58.007(c); 40 T.A.C. §§ 749.2447(7), .2471. Thus, the statutory right of access granted to the requestor by sections 749.2447(7) and 749.2471 of title 40 of the Texas Administrative Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Consequently, the department may not withhold the information at issue under section 552.101 in conjunction with section 58.007(c) of the Family Code. As no other exceptions to disclosure are raised, the department must release the submitted information.

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# 564726

Enc. Submitted documents

c: Requestor
(w/o enclosures)