



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2015

Mr. Juan R. Molina
Counsel for the City of Mercedes
Law Office of Juan R. Molina
P.O. Box 190
Weslaco, Texas 78596

OR2015-12686

Dear Mr. Molina:

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# 566800.

The Mercedes Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). The department states it received the request for information on March 18, 2015. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Therefore, the ten-business-day deadline was April 1, 2015. However, the envelope in which the department requested a decision from this office was meter-marked April 2, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail).

Consequently, the department failed to request a decision from this office within the ten-business-day period prescribed by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.108, and may not withhold the information on that basis. However, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the 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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007. Fam. Code § 58.007(c). The relevant language of section 58.007 reads as follows:

(c) 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;

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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. 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 at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) is not applicable to the information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find the department has failed to demonstrate how the submitted information depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender. *See id.* § 51.03(a)-(b). Therefore, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

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

(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.

Id. § 261.201(a). The submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also 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 disabilities of minority removed for general purposes). Thus, we find the information is generally confidential under section 261.201 of the Family Code. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state

law[.]” *Id.* § 261.201(a). We note section 773.0612 of the Health and Safety Code constitutes “applicable state law” in this instance.

The requestor in this instance is a representative of the Texas Department of State Health Services (“DSHS”). The requestor has informed the department that DSHS seeks the information as part of an investigation of a named individual conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by DSHS. *See* Health & Safety Code § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by DSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [DSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification . . . is considered to have given consent to a representative of [DSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with [DSHS] rules.

Id. § 773.0612. DSHS states the individual at issue is a certified emergency medical technician. Thus, we find the submitted documents are directly related to emergency medical services personnel for purposes of section 773.0612(a). DSHS states, and provides information reflecting, DSHS intends to use the submitted information for purposes consistent with chapter 773 of the Health and Safety Code. Therefore, we determine the requestor has a statutory right of access to the information under section 773.0612(a) of the Health and Safety Code. Consequently, if the department determines DSHS intends to use the information for purposes consistent with the Family Code, the department must generally release the submitted information to the requestor. We note information obtained by DSHS pursuant to section 773.0612(a) is confidential in the hands of DSHS. *See id.* § 773.0612(b).

If, however, the department determines DSHS does not seek this information for purposes consistent with the Family Code, the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5 (1986); *see also* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201

information); Open Records Decision Nos. 655 (1997), 650 (1996), 440 at 2 (1986) (predecessor statute).

We note the submitted information contains driver's license information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130. The information we have marked is generally confidential under section 552.130 of the Government Code. A specific statutory right of access prevails over general exceptions to disclosure under the Act. Open Record Decision No. 451 at 4 (1986) (specific statutory right of access provisions generally prevail over the common law). Section 552.130 has its own access provisions, however, and is not a general exception under the Act. Accordingly, we find there is a conflict between the confidentiality provided by section 552.130 of the Government Code and the right of access afforded to the DSHS under section 773.0612 of the Health and Safety Code. Where general and specific provisions 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 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.). Section 773.0612 gives DSHS a general right of access to all information related to emergency medical services personnel being investigated by the DSHS. In contrast, section 552.130 makes driver's license and motor vehicle record information confidential and contains its own release provisions. *See* Gov't Code § 552.130. Therefore, we find the confidentiality provided by section 552.130 is more specific than the general access provision of section 773.0612. Furthermore, section 552.130 was passed in a later legislative session than section 773.0612.² Therefore, because section 552.130 is the more specific statute and was enacted later in time, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, if the department determines DSHS intends to use the submitted information for purposes consistent with the Family Code, the department must withhold the information we have marked under section 552.130 of the Government Code and must release the remaining information pursuant to section 773.0612 of the Health and Safety Code. If the department determines DSHS does not seek the submitted information for purposes consistent with the Family Code, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

²Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government 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,

A handwritten signature in black ink, appearing to read "Mili Gosar". The signature is fluid and cursive, with the first name "Mili" and last name "Gosar" clearly distinguishable.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 566800

Enc. Submitted documents

c: Requestor
(w/o enclosures)