



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2015

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-22151

Dear Ms. Mebane:

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# 583909 (PIR No. W044598).

The Fort Worth Police Department (the “department”) received a request for all service calls made to a specified address during a specified time period. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

The submitted information indicates the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family and Protective Services (“DFPS”) in accordance with chapter 42 of the Human Resources Code, and the individual whose information she requested is a prospective foster parent. *See generally* Hum. Res. Code ch. 42. Pursuant to rules promulgated by the executive commissioner of the Health and Human Services Commission (the “executive commissioner”) under chapter 42 of the Human Resources Code, child-placing agencies are required to complete a foster home screening prior to verifying a foster home. *See* Act of March 30, 2015, 84th Leg. R.S., ch.1, § 4.212, 2015 Tex. Sess. Law Serv. 1, 779-80 (Vernon) (to be codified as amendments to

¹Although you do not raise sections 552.101 and 552.130 of the Government Code in your brief, we understand the department to assert these exceptions based on your markings.

Hum. Res. Code § 42.042(a), (e), (f)-(g)) (executive commissioner shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies, child-care services, licensed child-care facilities, and registered family homes). As part of the screening, the agency must obtain certain information as set forth at section 749.2447 of title 40 of the Texas Administrative Code. 40 T.A.C. §§ 749.2445(c)(1), .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 about a prospective foster home:

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.

40 T.A.C. § 749.2447(7)(A), (C); *see id.* § 749.2445(a); *see also 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, section 749.2447(7) of title 40 of the Texas Administrative Code requires a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of prospective 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 prospective foster home pursuant to the requirements of section 749.2445.

In this instance, the requestor is seeking all service calls to a specified address for the previous two years. Accordingly, we conclude the requestor has a right of access to the

submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. Although you raise section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code, we note a specific statutory right of access overcomes general exceptions to disclosure in the Act and 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); *see also* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 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). Therefore, the department may not withhold the submitted information on the basis of common-law privacy or section 552.108 of the Government Code. Nevertheless, we must address the department's remaining arguments under sections 552.101 and 552.130 of the Government Code.

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 chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. We understand the City of Fort Worth is part of an emergency communication district established under section 772.218 of the Health and Safety Code. We understand some of the information you have marked consists of the originating telephone number of a 9-1-1 caller furnished by a service supplier. Thus, we conclude the information we have marked is generally confidential under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, we find you have failed to demonstrate any of the remaining information at issue consists of the originating addresses or telephone numbers of 9-1-1 callers. As a result, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Upon review, we find the information you have marked consists of motor vehicle record information for purposes of section 552.130. Accordingly, the motor vehicle record information you have marked is generally confidential under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. We conclude, however, because section 552.130 of the Government Code has its own access provision, this section is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provided under section 772.218 of the Health and Safety Code and section 552.130 of the Government Code. Where information falls within both a general and specific provision of law, the specific provision prevails over the general. *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). Although section 749.2447(7) generally allows a child-placing agency access to service call information, section 772.218 of the Health and Safety Code specifically protects originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier and section 552.130 of the Government Code specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 772.218 of the Health and Safety Code and section 552.130 of the Government Code are more specific than the right of access provided by section 749.2447(7). Accordingly, we conclude, notwithstanding the statutory right of access granted to the requestor by section 749.2447(7) of title 40 of the Texas Administrative Code, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code and the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The department must release the remaining information pursuant to section 749.2447(7) of title 40 of the Texas Administrative 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.

²Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 583909

Enc. Submitted documents

c: Requestor
(w/o enclosures)