



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2015

Ms. Victoria D. Honey
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-22646

Dear Ms. Honey:

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# 584828 (Fort Worth PIR No. W044757).

The City of Fort Worth (the "city") received a request for all calls for service made to a specified address during a specified period of time. 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.

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 individuals whose information she requested are prospective foster parents. *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 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, 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). Therefore, the city may not withhold the submitted information on the basis of common-law privacy. Nevertheless, we must address the city's remaining argument under section 552.101 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 is part of an emergency communication district established under section 772.218 of the Health and Safety Code. You represent the information you have marked consists of the originating telephone numbers of 9-1-1 callers furnished by a service supplier. Thus, we conclude the information you 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.

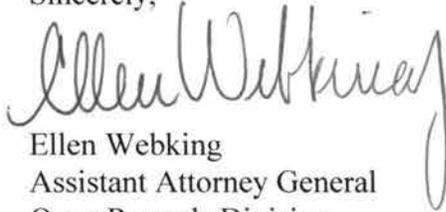
However, as previously noted, the requestor has a statutory right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. Therefore, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provided under section 772.218 of the Health and Safety Code. 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. Thus, we find the confidentiality provided by section 772.218 of the Health and Safety Code is 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 city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The remaining

information must be released pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code.¹

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 584828

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.