



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 24, 2015

Ms. Crystal Koonce
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 75626

OR2015-24706

Dear Ms. Koonce:

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# 588399.

The Williamson County Sheriff's Office (the "sheriff's office") received two requests from two different requestors for all information relating to incidents that occurred at a specified address for the previous two years. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions the sheriff's office claims 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:

(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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As the sheriff’s office does not indicate it has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the sheriff’s office must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

However, the first 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 two residents of the specified address at issue are prospective foster parents. *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 749.2447(7) of title 40 of the Texas Administrative Code constitutes such “applicable state law.”

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* 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). 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. As part of the screening or evaluation, the agency must obtain certain information as set forth at section 749.2447. 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:

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), (c)(1), .2471(1); *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 current or prospective foster parents from appropriate law enforcement agencies. *See id.* § 749.2447(7)(A), (C). 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 or prospective foster home pursuant to the requirements of section 749.2445 or section 749.2471.

In this instance, the first requestor is seeking all information relating to incidents that occurred at a specified address for the previous two years. Accordingly, we conclude the first requestor has a right of access to the submitted information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. 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 the first requestor is for a purpose consistent with the Family Code. Therefore, pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code, the sheriff’s office may not withhold this information under section 552.101 in conjunction with section 261.201. Although the sheriff’s office seeks to withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.108 of the Government Code, 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 sheriff's office may not withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code.

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 the sheriff's office has marked consists of motor vehicle record information for purposes of section 552.130. Accordingly, the motor vehicle record information the sheriff's office has marked is generally confidential under section 552.130 of the Government Code.

However, as previously noted, the first 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 provisions, section 552.130 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 552.130 of the Government Code. As noted above, 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; *Cuellar*, 521 S.W.2d 277. Although section 749.2447(7) generally allows a child-placing agency access to service call information, section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 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 first requestor by section 749.2447(7) of title 40 of the Texas Administrative Code, the sheriff's office must withhold the motor vehicle record information the sheriff's office has marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the submitted information in its entirety from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must release the submitted information to the first requestor pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code; however, in releasing this information, it must withhold the motor vehicle record information the sheriff's office has marked under 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 588399

Enc. Submitted documents

c: Requestor
(w/o enclosures)