



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 11, 2015

Mr. Vance Hinds
Assistant Ellis County and District Attorney
Ellis County & District Attorney
109 South Jackson
Waxahachie, Texas 75165

OR2015-26073

Dear Mr. Hinds:

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# 590348.

The Ellis County District Attorney's Office (the "district attorney's office") received a request for 21 categories of information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.147 of the Government Code and privileged under section 30.006 of the Civil Practice and Remedies Code. We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information consists of court-filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not withhold the court-filed documents, which we have marked, under section 552.108. Additionally, we

note common-law privacy is not applicable to information contained in public records. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain). However, the Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). You also raise section 30.006 of the Civil Practice and Remedies Code, which is a civil discovery privilege under the Civil Practice and Remedies Code; it is not a discovery privilege found in either the Texas Rules of Civil Procedure or the Texas Rules of Evidence and therefore is not “other law” for purposes of section 552.022. Accordingly, we determine the information subject to section 552.022 may not be withheld from disclosure on the basis of section 30.006 of the Civil Practice and Remedies Code. However, as sections 552.101 and 552.130 of the Government Code make information confidential, we will consider their applicability to the information subject to section 552.022(a)(17). We will also consider your arguments under section 552.108 of the Government Code and section 30.006 of the Civil Practice and Remedies Code for the information not subject to section 552.022(a)(17).

Section 30.006(c)(2) of the Civil Practice and Remedies Code provides:

(c) Except as provided by Subsection (d), a court in a civil action may not order discovery from a nonparty law enforcement agency of information, records, documents, evidentiary materials, and tangible things if:

...

(2) the release of the information, records, documents, evidentiary materials, or tangible things would interfere with the detection, investigation, or prosecution of criminal acts.

Civ. Prac. & Rem. Code § 30.006(c)(2). Section 30.006(c)(2) applies to a court only and governs the discovery of a nonparty law enforcement agency’s information in a civil action. We note the Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See Gov’t Code §§ 552.005* (the Act does not affect scope of civil discovery), .0055 (subpoena duces tecum or request for discovery issued in compliance with statute or rule of civil or criminal procedure is not considered to be request for information under the Act). The discovery process is a process through which parties to litigation can obtain information pertaining to the litigation. A public information request under the Act is a process in which any individual may request information from a governmental body. Thus, the discovery process has no bearing on the availability of information requested under the Act.

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. Section 552.101 encompasses information made confidential by section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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). The submitted information consists of information used or developed in an investigation of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, the submitted information falls within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code 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). As we have no indication the district attorney’s office has adopted a rule governing the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we conclude the submitted information is confidential pursuant to section 261.201 of the Family Code, and the district attorney’s office generally must withhold it under section 552.101 of the Government Code on that basis.

We note the submitted information includes a CR-3 accident report. Section 552.101 also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

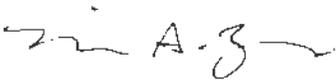
Here, the requestor is a person listed under section 550.065(c). Thus, the requestor has a right of access to the accident report pursuant to section 550.065(c). Thus, although the submitted information is generally confidential under section 261.201 of the Family Code, section 550.065(c) of the Transportation Code requires the district attorney's office to release the accident report to the requestor.

Therefore, we must address the conflict between the confidentiality provided under section 261.201 of the Family Code and the right of access provided under section 550.065(c) of the Transportation Code. Where general and specific statutes 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 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.). In this instance, although section 261.201 generally pertains to all records of alleged child abuse or neglect, section 550.065(c) specifically pertains to accident reports. Therefore, we find section 550.065 is more specific than, and prevails over, section 261.201. Therefore, the district attorney's office must release the CR-3 accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. The district attorney's office must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 590348

Enc. Submitted documents

c: Requestor
(w/o enclosures)