



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 12, 2016

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2016-15678

Dear Ms. Thomas:

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# 617848.

The Temple Police Department (the "department") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1085 of the Government Code. We have considered the exceptions you claim 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) Except as provided by Section 261.203, the 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 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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child neglect. *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(4) (defining “neglect” for purposes of chapter 261 of the Family Code). Thus, this information is generally confidential under section 261.201. We note the requestor is an investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) provides “[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare shall be referred immediately to [DFPS].” *See id.* § 261.105(a). In this instance, the submitted information indicates the person suspected of child neglect was responsible for the child’s care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child’s care, custody, or welfare includes a member of the child’s family or household as defined by chapter 71 of the Family Code); *see also id.* § 71.005 (household is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply in this instance. *See Attorney General Opinion No. GA-0879 (2011)* (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child’s care, custody, or welfare to DFPS). Although the department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code, a statute governing the release of specific information prevails over the general exceptions to disclosure found in the Act. *Attorney General Opinion DM-146 at 3 (1992)*; *Open Records Decision Nos. 613 at 4 (1993)* (exceptions in Act cannot impinge on statutory right of access to information), *451 at 4 (1986)* (specific statutory right of access provisions overcome Act’s general exceptions to disclosure). Therefore, the department may not withhold the submitted information from this requestor under section 552.108 of the Government Code. Although the department also asserts some of the submitted information is subject to section 552.101 of the Government Code in conjunction with common-law privacy, when a statute directly conflicts with a common-law principle or claim, the statutory provision controls and preempts 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 the statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir., 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

The department also asserts section 552.1085 for some of the submitted information. Section 552.1085 of the Government Code, provides, in pertinent part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). As stated above, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4, 451. Because section 552.1085 has its own access provisions, we conclude section 552.1085 is not a general exception under the Act. Thus, we must address the applicability of section 552.1085 to the submitted information.

For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See* Gov't Code § 552.1085(a)(6). You state the criminal case associated with the submitted information is still pending. We note section 552.1085 of the Government Code applies to information concerning closed criminal cases. *See id.* Consequently, section 552.1085 is inapplicable, and the department may not withhold the submitted information under section 552.1085(c) of the Government Code.

We note the submitted information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator’s or 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.¹ Gov't Code § 552.130(a). Upon review, we find portions of the submitted information consist of motor vehicle record information. Accordingly, the department must generally withhold the information we have marked in the submitted documents as well as all discernible and audible motor vehicle record information within the submitted audio and video recordings under section 552.130.

As previously noted, the requestor has a right of access to the submitted information under section 261.105(a). We note a statutory right of access generally prevails over the Act’s general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. However, because section 552.130 of the Government Code has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 261.105 of the Family Code and the confidentiality provided by section 552.130 of the Government Code. Where information

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

falls within both a general and a specific provision of law, the specific provision prevails over the general. See *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887.901 (Tex. 2000) (“more specific statute controls over the more general”); *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 261.105(a) generally allows DFPS access to reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare, section 552.130 specifically protects motor vehicle record information. We therefore conclude section 261.105(a) does not provide DFPS access to information subject to section 552.130. Thus, notwithstanding the provision of section 261.105(a) of the Family Code, the department must withhold the information we have marked in the submitted documents as well as all discernible and audible motor vehicle record information within the submitted audio and video recordings under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked in the submitted documents as well as all discernible and audible motor vehicle record information within the submitted audio and video recordings under section 552.130 of the Government Code. The department must release the remaining information.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.

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,



Paige Lay
Assistant Attorney General
Open Records Division

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²We note that because the requestor has a statutory right of access to the submitted information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 617848

Enc. Submitted documents

c: Requestor
(w/o enclosures)