



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2016

Ms. Dawn Roberts
Assistant City Attorney
City of Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2016-16568

Dear Ms. Roberts:

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# 625904 (PD Ref. No. 27848).

The Arlington Police Department (the "department") received a request for information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, including section 261.201(a) 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 Chapter 552, Government Code, 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:

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

(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). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Accordingly, we find this information falls within the scope of section 261.201 of the Family Code. We have no indication the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

However, we note the submitted documents include the arrestee’s breath test results. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person’s attorney. *See* Transp. Code § 724.018. In this instance, the requestor is the person who provided the breath specimen at the request of a peace officer. Accordingly, we find the requestor has a right of access to the information subject to section 724.018 of the Transportation Code, which we have marked.

Thus, although the submitted information is generally confidential under section 261.201(a) of the Family Code, section 724.018 provides the requestor with a right of access to the information pertaining to the analysis of the breath specimen obtained by a peace officer. Therefore, there is a conflict between the confidentiality provision of section 261.201(a) and the right of access provision of section 724.018. 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 of the Family Code generally makes records of alleged child abuse or neglect confidential, section 724.018 of the Transportation Code specifically permits release of information pertaining to the analysis of

²As our ruling is dispositive, we need not address your argument against disclosure for this information.

a breath specimen to certain parties. We therefore conclude the information pertaining to the analysis of a breath specimen may not be withheld from the requestor under section 261.201(a). We note although you also seek to withhold the information at issue under section 552.108 of the Government Code, a provision providing a specific right of access prevails over the exceptions to disclosure found in the Act. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Thus, the department must release the information pertaining to the analysis of a breath specimen, which we marked, to the requestor under section 724.018 of the Transportation Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³

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/bw

Ref: ID# 625904

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released in this instance is confidential with respect to the general public. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.