



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2014

The Honorable John J. Specia, Jr.
Commissioner
Texas Department of Family and
Protective Services
701 West 51st Street
Austin, Texas 78714-9030

Open Records Decision No. 688

Re: Questions concerning the applicability
of section 552.1085 of the Government
Code to information subject to certain rules
of the Texas Department of Family and
Protective Services (ORQ-73)

Dear Commissioner Specia:

You ask six questions concerning the applicability of section 552.1085 of the Government Code. Section 552.1085 is an exception to required public disclosure in the Public Information Act (the "PIA") for certain sensitive crime scene images obtained from a law enforcement agency and contained in child abuse or neglect case records of the Department of Family and Protective Services (the "Department").¹ As background, the Department conducts certain child abuse or neglect investigations jointly with an appropriate state or local law enforcement agency. TEX. FAM. CODE ANN. § 261.301(a), (f), (h) (West 2014); TEX. CODE CRIM. PROC. ANN. art. 2.27(a) (West Supp. 2013). In the course of these joint investigations, a law enforcement agency must furnish to the Department information about alleged child abuse or neglect committed by a person responsible for the child's care, custody, or welfare. TEX. FAM. CODE ANN. §§ 261.105(a), .301(a) (West 2014); *see also* TEX. HUM. RES. CODE ANN. § 40.0524(b) (West 2013) (permitting members of multidisciplinary teams to exchange information relating to report of child abuse or neglect as necessary to facilitate thorough investigation). You first ask:

1. In the event the Department engaged in a joint investigation with a law enforcement agency and copies of photographs taken at a crime scene during that joint investigation are stored in the Department's records, do the Department's rules

¹See Letter from Honorable John J. Specia, Jr., Comm'r, Tex. Dep't of Family and Protective Servs., to Honorable Greg Abbott, Tex. Att'y Gen. (Dec. 4, 2013) ("Request Letter") (on file with the Open Records Division).

[adopted pursuant to Family Code section 261.201(a) in chapter 700 of title 40 of the Texas Administrative Code] concerning access to photographs that are part of a child abuse or neglect case file control, or is access to the photographs requested from the Department subject to the requirements of [s]ection 552.1085 [of the] Government Code?

Request Letter at 1 (footnotes deleted).

In construing a statute, a court first determines and gives effect to the Legislature's intent. *Tex. Dep't of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 176 (Tex. 2004). Courts ascertain that intent first from the statute's language. *Traxler v. Entergy Gulf States, Inc.*, 376 S.W.3d 742, 747 (Tex. 2012). With this principle in mind, we examine the relevant statutory provisions. The PIA generally makes information in the possession of a governmental body, such as the Department, available to the public upon written request. See TEX. GOV'T CODE ANN. § 552.021 (West 2012); see also *id.* §§ 552.002(a) (West Supp. 2013) (defining "public information"), .003(1)(A) (defining "governmental body"). The PIA contains numerous exceptions to the general rule of required public disclosure, one of which is section 552.1085, which became effective September 1, 2013. See Act of May 22, 2013, 83rd Leg., R.S., ch. 1360, §§ 1, 3, 2013 Tex. Gen. Laws 3608, 3609 ("Senate Bill 1512").

Subsection 552.1085(c) of the Government Code exempts from required public disclosure a "sensitive crime scene image" and provides as follows:

(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.

TEX. GOV'T CODE ANN. § 552.1085(c) (West Supp. 2013). A "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." *Id.* § 552.1085(a)(6). Subsection 552.1085(d) states certain categories of persons may view or copy a sensitive crime scene image in the possession of a governmental body. *Id.* § 552.1085(d). While subsection 552.1085(d) permits certain requestors to view or copy a sensitive crime scene image in the possession of a governmental body, a governmental body

may assert another exception under the PIA or another law to exempt the disclosure of an image to a person identified in subsection (d). *Id.* § 552.1085(e).

You question whether the disclosure obligations of section 552.1085 apply to crime scene photographs held by the Department under chapter 261 of the Family Code.² Subsection 261.201(a) of the Family Code makes “confidential” and “not subject to public release under Chapter 552, Government Code”: (1) a report of alleged or suspected abuse or neglect made under chapter 261 of the Family Code; and (2) the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under chapter 261 or in providing services as a result of an investigation.³ TEX. FAM. CODE ANN. § 261.201(a) (West 2014). Section 261.203 of the Family Code requires, on request, the Department’s public release of specific information at different stages of its investigation of a child fatality. *Id.* § 261.203. The information subject to required public release under section 261.203 does not include a photograph of the deceased child. *See id.* Therefore, a sensitive crime scene image in the Department’s child abuse or neglect case records is “confidential” under subsection 261.201(a) of the Family Code. *Id.* § 261.201(a); *see* 40 TEX. ADMIN. CODE § 700.202(1) (2014) (defining “case records”). As such, these images are excepted from required public disclosure under Government Code section 552.101, an exception in the PIA to required public disclosure of requested information “considered to be confidential by law,” including information made confidential by statute. TEX. GOV’T CODE ANN. § 552.101 (West 2012); *see Doe v. Tarrant Cnty. Dist. Attorney’s Office*, 269 S.W.3d 147, 155 (Tex. App.—Fort Worth 2008, no pet.) (“By expressly exempting information within the scope of section 261.201 from the scope of the [PIA], the legislature imposed on the governmental body a duty to maintain the confidentiality of that information.”).⁴

²Your question references the Department’s rules adopted pursuant to section 261.201 of the Family Code at chapter 700 of title 40 of the Texas Administrative Code. *See* Request Letter at 1. Thus, we do not consider the interplay of section 552.1085 with the Department’s rules adopted pursuant to section 40.005 of the Human Resources Code at chapter 745 of title 40 of the Texas Administrative Code that are applicable to Department records of child abuse and neglect investigations at certain licensed child care facilities. TEX. HUM. RES. CODE ANN. § 40.005 (West 2013); 40 TEX. ADMIN. CODE §§ 745.8481–.8495 (2014); *see also* 40 TEX. ADMIN. CODE § 700.201 (providing rules in subchapter B of chapter 700 of title 40 of Texas Administrative Code apply to investigations carried out under Family Code subsection 261.301(a) and do not apply to release of information relating to investigation of abuse or neglect alleged to have occurred in facility carried out under Family Code subsection 261.301(b) or to release of information from Department’s Central Registry).

³Section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code. TEX. FAM. CODE ANN. § 261.201(h) (West 2014).

⁴This office has authorized the Department to withhold from required public disclosure, without seeking an attorney general ruling, requested child abuse and neglect investigation records under Government Code section 552.101 in conjunction with Family Code subsection 261.201(a), unless the Department’s rules permit the Department to release the requested records to the particular requestor. Tex. Att’y Gen. OR-2003-05590 (2003) at 2-3.

The information made confidential by subsection 261.201(a) must be disclosed “as provided by Section 261.203” and “may be disclosed *only* for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency.” See TEX. FAM. CODE ANN. § 261.201(a) (West 2014) (emphasis added). The Legislature vested the Department with authority to decide the permissible circumstances for release of its records of child abuse and neglect investigations by requiring that release of such records be *only* for purposes consistent with the Family Code and granting the Department, as the investigating agency, the authority to promulgate rules permitting the release of its investigation records.⁵ *Id.*

The Legislature specifically addressed the general public’s right to Department case file information about a child fatality and limited that right to the information listed in section 261.203. *Id.* §§ 261.201, .203. S.B. 1512 amended the law on what information governmental bodies must disclose under the PIA, not what information the Department may or must disclose under the Family Code and Department rules. Act of May 22, 2013, 83rd Leg., R.S., ch. 1360, §§ 1, 3, 2013 Tex. Gen. Laws 3608, 3609. Under well-established canons of statutory construction, a statute that speaks to a specific circumstance is controlling in the case of a conflict with a statute of more general applicability. See *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (recognizing “the traditional statutory construction principle that the more specific statute controls over the more general”); TEX. GOV’T CODE ANN. § 311.026(b) (West 2013). Thus, the Legislature’s specific instructions to the Department regarding materials covered by Family Code subsection 261.201(a) control in the case of a conflict with the general provisions regarding all crime scene photographs found in section 552.1085 of the Government Code. In answer to your first question, the Legislature intended the Family Code and the Department’s rules adopted thereunder to govern the confidentiality and release of photographs in child abuse and neglect case file records and, furthermore, did not intend sensitive crime scene photographs covered by subsection 261.201(a) of the Family Code to be subject to the requirements of section 552.1085 of the Government Code.

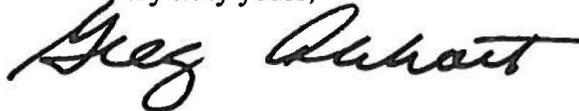
In light of this conclusion, we need not address your remaining questions.

⁵A governmental body may not make information confidential and excepted from disclosure under the PIA by promulgation of a rule under its general rule-making powers, but only under a more specific grant of authority from the Legislature to make such a rule. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Subsection 261.201(a) provides the Department specific authority to promulgate rules governing the confidentiality and permissible disclosure of the child abuse and neglect investigation files it maintains. TEX. FAM. CODE ANN. § 261.201(a) (West 2014); see also TEX. HUM. RES. CODE ANN. § 40.005(a) (West 2013).

SUMMARY

The Legislature intended subsection 261.201(a) of the Family Code to govern the confidentiality and release of photographs in child abuse and neglect case file records of the Texas Department of Family and Protective Services and, furthermore, did not intend sensitive crime scene photographs covered by subsection 261.201(a) to be subject to the general requirements of section 552.1085 of the Government Code.

Very truly yours,

A handwritten signature in black ink that reads "Greg Abbott". The signature is written in a cursive, flowing style.

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