



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 15, 2010

Ms. Jennifer Rutherford McClure
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2010-17211

Dear Ms. McClure:

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# 400493.

The Denton County District Attorney (the "district attorney") received a request for the district attorney's file on a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 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. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

- (a) [The] 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:

(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). You state the submitted information was developed in an investigation of child abuse. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of Fam. Code ch. 261 as including sexual assault under Penal Code § 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.011 as a person younger than 17 years of age). Based on your representations and our review, we find the submitted information is within the scope of section 261.201. It does not appear any of the exceptions in section 261.201 apply. You have not indicated the district attorney has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the submitted information contains fingerprints belonging to an individual for whom the requestor is an authorized representative. Fingerprints are governed by chapter 560 of the Government Code, which is also encompassed by section 552.101. Section 560.001(1) provides that “[b]iometric identifier” means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.” Gov’t Code § 560.001(1). Under section 560.003 of the Government Code, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. Section 560.002 states, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, we find a person, or the person’s authorized representative, has a right of access under section 560.002(1)(A) to that person’s biometric information. Thus, as the authorized representative of the individual whose fingerprints are at issue, the requestor has a right of access to the submitted fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Although the document containing the fingerprints at issue is generally confidential under section 261.201 of the Family Code, section 560.002 of the Government Code provides the requestor with a right of access to these fingerprints. Therefore, in this instance, there is a conflict between the confidentiality provision of section 261.201 of the Family Code and the

right of access provision of section 560.002 of the Government 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 makes records of alleged child abuse confidential, section 560.002 specifically permits release of fingerprints to certain parties. We, therefore, conclude the marked fingerprints in the document at issue may not be withheld from this requestor under section 261.201. Likewise, general exceptions in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Consequently, the fingerprints we have marked may not be withheld from this requestor under section 552.108 of the Government Code, which you also raise as an exception to disclosure. Thus, the district attorney must release the marked fingerprints to this requestor under section 560.002 of the Government Code. The remaining information must be withheld 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

Ref: ID# 400493

Enc. Submitted documents

c: Requestor
(w/o enclosures)