ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2011

Ms. Jennifer McClure
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2011-04873

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# 415412.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for information pertaining to a specified case number. 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in part:

> (a) Except as provided by Section 261.203, 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). Upon review, we find the submitted information was used or developed in an investigation of alleged child abuse or neglect under chapter 261. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201); *id.* § 101.003(a) (defining "child" as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). As there is no indication the district attorney has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we find the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the information contains the requestor's fingerprints. Section 552.101 also encompasses section 560.003 of the Government Code, which provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 provides, 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, the requestor, in this instance, has a right of access to her 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 submitted information 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 her fingerprints, which we have marked. Therefore, there is a conflict between the confidentiality provision of section 261.201 and the right of access provision of section 560.002. 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 or neglect confidential, section 560.002 specifically permits release of fingerprints to

certain parties. We, therefore, conclude the marked fingerprints may not be withheld from this requestor under section 261.201(a). 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,

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/tf

Ref: ID# 415412

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[1]As our ruling is dispositive, we need not address your arguments against disclosure.