



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2011

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-11395

Dear Ms. Benton:

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# 426213 (LGL-11-697).

The City of Waco (the "city") received a request for two specified offense reports. You indicate the city released one of the requested reports to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.130 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."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) [T]he 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). We note the submitted information was used or developed in an investigation by the city's police department of suspected or alleged injury to a child. *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code ch. 261); Penal Code § 22.04(c) (defining "child" for purposes of injury to a child as person 14 years of age or younger). Upon review, we find the submitted information is within the scope of section 261.201. However, the requestor in this instance is a representative of the Texas Department of Family and Protective Services ("DFPS"). Section 261.105(a) of the Family Code 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 suspect was a member of the household of the alleged child victim when the abuse allegedly occurred. Pursuant to the Family Code, the suspect 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), .006 (member of a household includes a person who previously lived in a household). Accordingly, section 261.105(a) is applicable. *See* Attorney General Opinion GA-0106 at 6 (2003) (stating that in accordance with section 261.105(a), DFPS is required to investigate report of child abuse by person responsible for child's care, custody, and welfare with assistance provided by appropriate state or local law enforcement agency). Although you claim the submitted information is excepted under section 552.108 of the Government Code, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* 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 general exceptions to disclosure under the Act). Additionally, you also claim portions of the submitted information are subject to section 552.130 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Upon review, we find the information you have marked and the information we have marked constitute motor vehicle record information that is generally confidential under section 552.130.

As previously noted, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4, 451. 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 under section 552.130. Where information 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. Section 552.130 specifically permits release in certain circumstances that do not include DFPS' request in this instance. *See* Gov't Code § 552.130(b). We therefore conclude section 261.105(a) does not provide DFPS access to information subject to section 552.130. We therefore conclude, notwithstanding the provision of section 261.105(a), the city must withhold from DFPS the marked information under section 552.130. The remaining submitted information must be released to this requestor.²

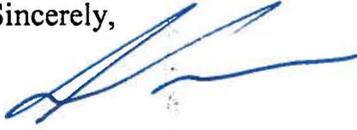
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.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

²Because the requestor has a special right of access to this information in this instance, the city must again seek a decision from this office if it receives another request for the same information from a different requestor.

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,

A handwritten signature in blue ink, appearing to read 'Ana Carolina Vieira', with a long horizontal flourish extending to the right.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 426213

Enc. Submitted documents

c: Requestor
(w/o enclosures)