



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2012-07662

Dear Ms. Bull:

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# 454197 (PD Ref. No. 7005-030212).

The Arlington Police Department (the "department") received a request for information pertaining to the requestor's client and a specified incident. You claim that the submitted information is excepted from disclosure under section 552.101 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). Because the submitted information pertains to an investigation of alleged or suspected child abuse, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes indecency with child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11 (defining “child” for purposes of section 21.11 as a minor younger than 17 years of age), 22.011(c)(1) (defining “child” for purposes of sections 22.011 and 22.021 as “a person younger than 17 years of age”), .021(b)(1). In this instance, the submitted information reflects the requestor’s client is a parent of one of the victims. However, this parent is alleged to have committed the abuse. Furthermore, this child victim is now an adult. Thus, the requestor, as the authorized representative of his client, does not have a right of access to this report under section 261.201(k). *See* Fam. Code § 261.201(k). Based on our review, we determine the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, section 261.201(a) of the Family Code also provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law[.]” Fam. Code § 261.201(a).

The submitted information includes information obtained from a polygraph examination, access to which is governed by section 1703.306 of the Occupations Code. Section 1703.306 constitutes “applicable state law” for purposes of section 261.201(a). Section 1703.306(a)(1) provides as follows:

A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a)(1). The requestor's client is the polygraph examinee. Thus, if the department determines disclosure of the polygraph information is consistent with chapter 261 of the Family Code, then the department has the discretion to release the requestor's client's polygraph information, which we have marked, pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permits, but does not require, examination results to be disclosed to examinees). Although you also raise common-law privacy for this information, a specific statutory right of access prevails over the common law. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). If the department determines disclosure of the polygraph information is not consistent with chapter 261 of the Family Code, then the department may not provide the polygraph information to the requestor on that ground.

We note the submitted information also contains fingerprints belonging to the requestor's client. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides in part that “[i]n this chapter . . . ‘[b]iometric identifier’ means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.” Gov’t Code § 560.001(1). Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. 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). Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprint information. Accordingly, because the requestor is acting as the authorized representative of his client, he has a right of access to his client's fingerprints, which we have marked, under section 560.002(1)(A).

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 his client's marked fingerprints. Therefore, there is a conflict between section 261.201 of the Family Code and the applicable provisions of chapter 560 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 that the legislature intended the general provision to prevail. *See id.* § 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

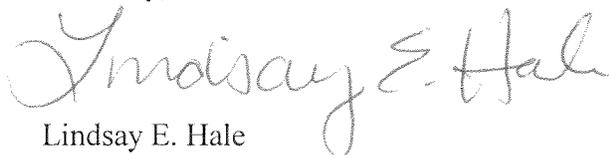
confidential, the applicable provisions of chapter 560 of the Government Code specifically requires the release of fingerprints to certain parties and under certain circumstances. You also raise common-law privacy for this information. However, as previously noted, a specific statutory right of access prevails over the common law. *Collins*, 297 S.W.3d at 415; *see also CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544. Therefore, we conclude that the department must release the marked fingerprints under section 560.002(1)(A) of the Government Code.

In summary, the department may release the polygraph information we have marked pursuant to section 1703.306(a)(1) of the Occupations Code if the department determines disclosure of this information is consistent with chapter 261 of the Family Code; otherwise, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the requestor's client's fingerprints, which we have marked and must be released, the department must withhold the remaining information 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

¹We note this requestor has a special right of access to the information being released, which would otherwise be confidential with respect to the general public. Accordingly, if the department receives another request for this information from an individual other than this requestor or his client, the department must again seek a ruling from this office.

Ref: ID# 454197

Enc. Submitted documents

c: Requestor
(w/o enclosures)