



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2012

Mr. Brent Webster  
Assistant District Attorney  
Williamson County  
405 Martin Luther King Street, Suite 1  
Georgetown, Texas 78626

OR2012-19688

Dear Mr. Webster:

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# 473127.

The Williamson County District Attorney's Office (the "district attorney's office") received a request for all information regarding two specified individuals. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the applicability of section 552.007 of the Government Code to the submitted information. You provide documentation showing some of the submitted information was previously released in response to a prior request for information. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; *see also* Open Records Decision Nos. 518 at 3 (1989), 490 (1988), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). In this instance, the district attorney's office raises section 552.101 for the information at issue, which makes information confidential under the Act. *See* Gov't Code § 552.101. Thus, we will consider your argument under section 552.101 against disclosure of the information at issue.

Next, we note the responsive information includes a completed investigation subject to section 552.022(a)(1) of the Government Code, which provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is made confidential under the Act or other law or is excepted by section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Although you raise section 552.111 of the Government Code, this is a discretionary exception to disclosure that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 677 at 10-11 (work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, section 552.111 does not make information confidential under the Act, and the district attorney's office may not withhold the information at issue on this basis. The Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to "actions of a civil nature." *See* TEX. R. CIV. P. 2. Thus, because the information at issue relates to a criminal case, the attorney work product privilege in rule 192.5 of the Texas Rules of Civil Procedure does not apply to it. However, as section 552.101 of the Government Code applies to confidential information, we will consider the applicability of this section to the information at issue.

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 part:

(a) Except as provided by Section 261.203, the 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.

...

(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). Upon review, we find the submitted information was used or developed in investigations of alleged or suspected abuse or neglect of children. *See id.* §§ 101.003(a) (defining “child” for purposes of this section), 261.001(1)(J) (defining “abuse” for purposes of Family Code chapter 261 to include causing, “expressly permitting, or encouraging a child to use a controlled substance”), 261.001(4) (defining “neglect” for purposes of chapter 261 of the Family Code). Therefore, this information is within the scope of section 261.201. We note that although the requestor represents a parent of one of the children who was the victim of the alleged or suspected abuse or neglect in two of the reports, the parent is alleged to have committed the suspected abuse or neglect. Therefore, the information may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 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).

We note the submitted information contains fingerprints belonging to the requestor’s client. 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 his client’s fingerprints, which we have marked, 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 the submitted fingerprints. 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 or suspected 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 of the Family Code. Thus, the district attorney's office 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.<sup>1</sup>

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](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/dls

Ref: ID# 473127

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure. Further, we 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 district attorney's office receives another request for this information from an individual other than this requestor, the district attorney's office must again seek a ruling from this office.