



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2013

Ms. Rebecca R. Walton
County Attorney
Hardin County
P.O. Box 516
Kountze, Texas 77625

OR2013-10753

Dear Ms. Walton:

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# 491274.

The Hardin County Sheriff's Department (the "department") received a request for information pertaining to a specified case involving four named individuals. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 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, in pertinent 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

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

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 or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, this information is generally confidential under section 261.201. In this instance, however, the requestor is a representative of the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) 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 persons suspected of child abuse in the submitted information are the parents of the alleged child victim, and the submitted documents indicate they were 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). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply in this instance. *See Attorney General Opinion No. GA-0879 (2011)* (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child’s care, custody, or welfare to DFPS). Although you claim the submitted information is excepted under sections 552.103 and 552.108 of the Government Code, we note 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 Act’s general exceptions to disclosure). Therefore, the submitted information may not be withheld under section 552.103 or section 552.108 of the Government Code.

We note portions of the submitted information, which we have marked, 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 or driver’s license issued by an agency of this state or another state or country is excepted from public release. Gov’t

Code. § 552.130(a)(1). Thus, the information we have marked is generally confidential under section 552.130 of the Government Code.

As previously discussed, the requestor has a right of access to the submitted information under section 261.105(a). As also noted above, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* ORDs 613, 451. Section 552.130 of the Government Code has its own access provisions. Therefore, 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 by section 552.130 of the Government Code. 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. Therefore, we conclude section 261.105(a) does not provide DFPS access to information subject to section 552.130. Thus, the department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information to the requestor pursuant to section 261.105(a) of the Family Code.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

²We note because the requestor has a special right of access to the information being released, if the department receives another request for this information from an individual without such a right of access, the department must again seek a ruling from this office. *See* Fam. Code § 261.105(a). We note, effective May 18, 2013, the Texas legislature amended section 552.130 of the Government Code to allow a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov’t Code § 552.130(c)). Thus, a governmental body may begin redacting information subject to subsection 552.130(a) with respect to requests for information received by the department on or after May 18, 2013. However, if a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov’t Code § 552.130(d), (e).

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 black ink that reads "Kathleen J. Santos". The signature is written in a cursive style with a large, stylized initial "K".

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 491274

Enc. Submitted documents

c: Requestor
(w/o enclosures)