



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2013

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2013-14847

Dear Ms. Pemberton:

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# 497537 (City ID No. W010824).

The City of Killeen (the "city") received a request for information related to cases involving the requestor. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 261.201 provides in relevant part:

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.

...

(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). We find the information at issue, which involves the offense of driving while intoxicated with a child passenger, was used or developed in an investigation of alleged child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Accordingly, we find the information at issue falls within the scope of section 261.201(a) of the Family Code. We note that although the requestor is a parent of the child victims, the requestor is alleged to have committed the suspected abuse or neglect. Thus, the information at issue may not be provided to the requestor pursuant to section 261.201(k). *See id.* § 261.201(k). We therefore conclude the city must generally withhold the information at issue in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1996) (predecessor statute).*

However, we note the submitted documents contain information pertaining to the analysis of a breath specimen obtained by a peace officer. Section 724.018 of the Transportation Code provides that “[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made

available to the person or the person's attorney." Transp. Code § 724.018. In this instance, the requestor is the individual who gave the breath specimen at the request of a peace officer. Accordingly, we find the requestor has a right of access to the information subject to section 724.018 of the Transportation Code.

Thus, although the submitted information is generally confidential under section 261.201 of the Family Code, section 724.018 provides the requestor with a right of access to the information pertaining to the analysis of the breath specimen obtained by a peace officer. Therefore, there is a conflict between the confidentiality provision of section 261.201 and the right of access provision of section 724.018. 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 of the Family Code generally makes records of alleged child abuse or neglect confidential, section 724.018 of the Transportation Code specifically permits release of information pertaining to the analysis of a breath specimen to certain parties. We, therefore, conclude the information we have marked pertaining to the analysis of a breath specimen may not be withheld from the requestor under section 261.201(a). We further note that general exceptions in the Act cannot impinge on a statutory right of access to information. *See Open Records Decision No. 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 information we have marked may not be withheld from the requestor under section 552.108 of the Government Code. Thus, the city must release the information we have marked pertaining to the analysis of a breath specimen to the requestor under section 724.018 of the Transportation Code.

In summary, the city must release the information we have marked pertaining to the analysis of the breath specimen under section 724.018 of the Transportation Code. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 497537

Enc. Submitted documents

c: Requestor
(w/o enclosures)