



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2013

Mr. Gary W. Bunyard
Assistant District Attorney
33rd & 424th Judicial Districts
P.O. Box 725
Llano, Texas 78643

OR2013-18813

Dear Mr. Bunyard:

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# 503817.

The Office of the District Attorney for the 33rd and 424th Judicial Districts (the "district attorney's office") received a request for (1) information pertaining to criminal complaints or allegations filed against a named individual and (2) correspondence between the district attorney's office and three named individuals pertaining to a named individual during a specified time period. You state the district attorney's office has released some information to the requestor with redactions under sections 552.130 and 552.147 of the Government Code and section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim the district attorney's office need not comply with the request

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

pursuant to section 552.028 of the Government Code. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.132, 552.147, and 552.1325 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We first address your claim that the district attorney's office is not required to comply with the instant request for information. Section 552.028 of the Government Code provides as follows:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Id. § 552.028. Thus, under section 552.028, a governmental body has discretion to release requested public information to an individual who is imprisoned or confined in a correctional facility or to such an individual's agent, unless the agent is the individual's attorney. *See id.* § 552.028(a)(2); *Hickman v. Moya*, 976 S.W.2d 360 (Tex. App.—Waco, 1998). In this instance, the requestor identifies himself as an attorney representing the individual at issue. Section 552.028(a)(2) of the Government Code requires the district attorney's office to "accept or comply with a request for information" from an inmate's attorney, "when the attorney is requesting information that is subject to disclosure under this chapter." This provision, however, does not provide the attorney with any greater right of access to information than any other member of the public. As such, we conclude section 552.028 is inapplicable in this instance, and the district attorney's office must comply with the request for 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 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 child abuse. *See id.* §§ 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code), 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). Therefore, the submitted information is within the scope of section 261.201. We note, although the requestor represents a parent of the children who were victims of the alleged or suspected abuse, the parent is alleged to have committed the suspected abuse. 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 of the Government Code 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.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.texasattorneygeneral.gov/open/>

²As 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.

[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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 503817

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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