



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2016

Mr. Oscar Gabaldon, Jr.
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2016-05885A

Dear Mr. Gabaldon, Jr.:

This office issued Open Records Letter No. 2016-05885 (2016) on March 15, 2016. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on March 15, 2016. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 617462 (ORR No. 16-1026-7169).

The City of El Paso (the "city") received a request from an investigator with the Texas Department of State Health Services ("DSHS") for information pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from DSHS. *See id.* § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

¹Although you raise section 552.101 of the Government Code in conjunction with common-law and constitutional privacy, you have not submitted arguments explaining how common-law or constitutional privacy applies to the submitted information. Therefore, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301, .302.

§ 552.101. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Fam. Code § 261.201(a). The submitted information was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Family Code chapter 261); *see also 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 disabilities of minority removed for general purposes). Thus, we find the information is generally confidential under section 261.201 of the Family Code. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law[.]” *Id.* § 261.201(a). We note section 773.0612 of the Health and Safety Code constitutes “applicable state law” in this instance.

The requestor in this instance is a representative of DSHS. DSHS informs us it seeks the information as part of an investigation of the named individual conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by DSHS. *See Health & Safety Code § 773.041* (person may not practice as any type of emergency medical services personnel unless certified by DSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [DSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification . . . is considered to have given consent to a representative of [DSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with [DSHS] rules.

Id. § 773.0612. DSHS states the individual at issue is a certified emergency medical technician. Thus, we find the submitted documents are directly related to emergency medical services personnel for purposes of section 773.0612(a). DSHS states it intends to use the submitted information for purposes consistent with chapter 773 of the Health and Safety Code. Therefore, we determine the requestor has a statutory right of access to the information under section 773.0612(a) of the Health and Safety Code. Consequently, if the city determines DSHS intends to use the information for purposes consistent with the Family Code, the city must generally release the submitted information to the requestor. We note information obtained by DSHS pursuant to section 773.0612(a) is confidential in the hands of DSHS. *See id.* § 773.0612(b).

If, however, the city determines DSHS does not seek this information for purposes consistent with the Family Code, the city must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information); Open Records Decision Nos. 655 (1997), 650 (1996), 440 at 2 (1986) (predecessor statute).

We note the submitted information contains driver's license information subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Gov't Code § 552.130. The information we have marked is generally confidential under section 552.130 of the Government Code. A specific statutory right of access prevails over general exceptions to disclosure under the Act. Open Record Decision No. 451 at 4 (1986) (specific statutory right of access provisions generally prevail over the common law). Section 552.130 has its own access provisions, however, and is not a general exception under the Act. Accordingly, we find there is a conflict between the confidentiality provided by section 552.130 of the Government Code and the right of access afforded to DSHS under section 773.0612 of the Health and Safety Code. Where general and specific provisions 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* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake*

²The 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).

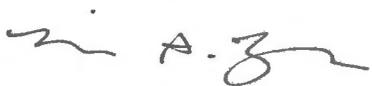
Cities Mun. Util. Auth., 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Section 773.0612 gives DSHS a general right of access to all information related to emergency medical services personnel being investigated by DSHS. In contrast, section 552.130 makes driver's license and motor vehicle record information confidential and contains its own release provisions. *See* Gov't Code § 552.130. Therefore, we find the confidentiality provided by section 552.130 is more specific than the general access provision of section 773.0612. Furthermore, section 552.130 was passed in a later legislative session than section 773.0612.³ Therefore, because section 552.130 is the more specific statute and was enacted later in time, the city must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, if the city determines DSHS intends to use the submitted information for purposes consistent with the Family Code, the city must withhold the information we have marked under section 552.130 of the Government Code and must release the remaining information pursuant to section 773.0612 of the Health and Safety Code. If the city determines DSHS does not seek the submitted information for purposes consistent with the Family Code, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

³Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government Code).

Ref: ID# 617462

Enc. Submitted documents

c: Requestor
(w/o enclosures)