



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2016

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2016-07885

Dear Mr. Gates:

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# 604938 (Midland ID# 18625).

The Midland Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 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 public 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 as follows:

(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). You assert the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we agree the submitted information is within the scope of section 261.201(a). Thus, the submitted information is generally confidential under section 261.201(a) of the Family Code. However, section 261.201(a) provides 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 chapter 48 of the Human Resources Code constitutes “applicable state law” in this instance.

In this instance, the requestor is with the Adult Protective Services (“APS”) division of the Texas Department of Family and Protective Services (“DFPS”). Under chapter 48 of the Human Resources Code, DFPS’s duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154(a) of the Human Resources Code provides as follows:

[DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or person with a disability. A person, agency, or institution that has a record or document that [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to [DFPS] or state agency that requested the record or document.

Id. § 48.154(a). The requestor states APS seeks the records at issue as part of an investigation. Consequently, DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code. *See id.* §§ 48.151, .152, .154(a). Thus, the requestor generally has a right of access to the information pursuant to section 48.154. However, as noted above, section 261.201(a) of the Family Code states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office cannot determine whether the release of the submitted information is consistent with the Family Code. Therefore, if the department determines release of the submitted information is not consistent with the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a). *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), (k) (listing entities authorized to receive information under section 261.201 of the Family Code). However, if the department

determines the release of the submitted information is consistent with the Family Code, then the department must release the submitted information to the requestor. We note a specific statutory right-of-access provision prevails over the Act's general exceptions to disclosure, such as section 552.108 of the Government Code. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Thus, the department may not withhold the submitted information from this requestor based on its argument under section 552.108.

If the department determines the release of the submitted information is consistent with the Family Code, then we note the submitted information includes motor vehicle record information subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, if the department determines the release of the submitted information is consistent with the Family Code, then the department must generally withhold the motor vehicle record information we have marked under section 552.130.

However, as noted above, section 48.154 of the Human Resources Code provides the requestor with a right of access to the submitted information. As previously noted, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4. We conclude, however, because section 552.130 of the Government Code has its own access provision, this section is not a general exception under the Act. *See* Gov't Code § 552.130(b); *see also* Attorney General Opinions GA-0055 at 3-4 (2003) (where statute specifically authorizes release of information under certain circumstances or to particular entities, that information may only be released or transferred in accordance therewith), DM-353 at 4-5 n.6 (1995) (detailed provisions in state law for disclosure of records would not permit disclosure "to other governmental entities and officials . . . without violating the record's confidentiality"), JM-590 at 5 (1986) ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others"). Therefore, we must address the conflict between the access provided under section 48.154 and the confidentiality provided under section 552.130. Where information falls within both general and specific statutory provisions, the specific provision prevails over the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended for the general provision to prevail. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *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); Open Records Decision No. 583 at 2 (1990) (specific statute stands as an exception or qualification to the

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).

more general). Although section 48.154 generally provides DFPS representatives with access to any information necessary to perform their duties under chapter 48 of the Human Resources Code, section 552.130 of the Government Code is specifically applicable only to motor vehicle record information. Thus, we find section 552.130 of the Government Code is more specific than the general right of access under section 48.154. Moreover, the statutory predecessor to section 48.154, section 48.0835 of the Human Resources Code, was enacted prior to section 552.130 of the Government Code. *See* Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting Gov't Code § 552.130); Act of May 24, 1993, 73d Leg., R.S., ch. 651, § 1, 1993 Tex. Gen. Laws 2436 (enacting Hum. Res. Code § 48.0835). Therefore, if the department determines the release of the submitted information is consistent with the Family Code, then notwithstanding the provisions of section 48.154, the department must withhold the information we have marked under section 552.130.

In summary, if the department determines release of the submitted information is not consistent with the Family Code, then the department 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. If the department determines the release of the submitted information is consistent with the Family Code, then the department must withhold the information we have marked under section 552.130 of the Government Code and release the remaining information to the requestor pursuant to section 48.154 of the Human Resources 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 black ink that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 604938

Enc. Submitted documents

c: Requestor
(w/o enclosures)