



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 26, 2016

Mr. Thomas M. Gilliland
Media Relations
Harris County Sheriff's Office
1200 Baker Street, Second Floor
Houston, Texas 77002-1206

OR2016-23902

Dear Mr. Gilliland:

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# 638154 (HCSO File No. 14SO6001280).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 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." Gov't Code § 552.101. Section 552.101 encompasses 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 [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 Juvenile Justice Department, 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). The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect by the sheriff's office. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" 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). Accordingly, we find this information falls within the scope of section 261.201 of the Family Code. In this case, although the requestor is the parent of the child victims named in the submitted information, the requestor is alleged to have committed the suspected abuse or neglect. Thus, the requestor does not have a right of access to the submitted information under section 261.201(k). *See id.* § 261.201(k). We have no indication the sheriff's office has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).*

However, we note the submitted documents include the arrestee's breath test results. Section 724.018 of the Transportation Code provides that, on the request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen must be made available to that person or the person's attorney. *See Transp. Code* § 724.018. In this instance, the requestor is the person who provided 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(a) 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(a) 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 pertaining to the analysis of a breath specimen may not be withheld from the requestor under section 261.201(a). Thus, the department must release the information pertaining to the analysis of a breath specimen to the requestor under section 724.018 of the Transportation Code. The sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

¹We note the information being released in this instance is confidential with respect to the general public. Therefore, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.

Ref: ID# 638154

Enc. Submitted documents

c: Requestor
(w/o enclosures)