



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2016

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2016-25114

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# 636253 (ORR# 20647).

The City of Midland (the "city") received a request for information related 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 information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant 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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse by the city's police department. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201 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), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). Thus, this information is generally confidential under section 261.201. We note the requestor is a representative of the Texas Department of Family and Protective Services ("DFPS"). Section 261.105(a) provides "[a]ll reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to [DFPS]." *See id.* § 261.105(a). In this instance, the submitted information indicates the person suspected of child abuse was responsible for the child's care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child's care, custody, or welfare includes a member of the child's family or household as defined by chapter 71 of the Family Code); *see also id.* § 71.005 (household is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other). Accordingly, section 261.105(a) is applicable, and the confidentiality of section 261.201(a) does not apply in this instance. *See* Attorney General Opinion No. GA-0879 (2011) (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child's care, custody, or welfare to DFPS). Therefore, the city may not withhold the submitted information from this requestor under section 552.101 of the Government Code on that basis.

We note the submitted information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or 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.¹ Gov't Code § 552.130(a). Accordingly, the city must generally withhold the information we have marked under section 552.130 of the Government Code.

As previously noted, the requestor has a right of access to the submitted information under section 261.105(a). We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. However, because section 552.130 of the Government Code has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict

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).

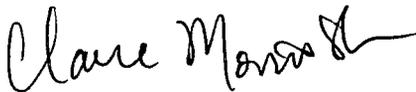
between the access provided under section 261.105 of the Family Code and the confidentiality provided by section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887.901 (Tex. 2000) (“more specific statute controls over the more general”); *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). Although section 261.105(a) generally allows DFPS access to reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child’s care, custody, or welfare, section 552.130 specifically protects motor vehicle record information. We therefore conclude section 261.105(a) does not provide DFPS access to information subject to section 552.130. Thus, notwithstanding the provision of section 261.105(a) of the Family Code, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we marked under section 552.130 of the Government Code. The city must release the remaining information to this requestor.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/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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/bhf

²We note because the requestor has a statutory right of access to the submitted information in this instance, the city must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 636253

Enc. Submitted documents

c: Requestor
(w/o enclosures)