



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2016

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-15883

Dear Ms. Mebane:

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# 618208 (Fort Worth Ref. No. W051336).

The City of Fort Worth (the "city") received a request for domestic violence police calls for two specified addresses. You state you do not have information responsive to a portion of the request.¹ You claim the submitted information is exempted 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 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree the submitted report involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). The exceptions in section 58.007 do not apply. Therefore, the report is generally confidential under section 58.007(c) of the Family Code.

However, the requestor is a representative of a child-placing agency that is licensed by the Texas Department of Family Protective Services (“DFPS”) in accordance with chapter 42 of the Human Resources Code. Further, the requestor states residents of the specified addresses are prospective foster parents. *See generally* Hum. Res. Code ch. 42. Pursuant to rules promulgated by DFPS under chapter 42 of the Human Resources Code, child-placing agencies are required to complete a foster home screening prior to verifying a foster home. *See id.* § 42.042(a), (e), (f)-(g) (DFPS shall make rules to carry out provisions of chapter 42, including minimum standards for child-placing agencies, child-care services, licensed child-care facilities, and registered family homes). As part of the screening, the agency must obtain certain information as set forth at section 749.2447 of title 40 of the Texas Administrative Code. 40 T.A.C. §§ 749.2445(c)(1), .2471(1); *cf.* Hum. Res. Code § 42.0561 (providing in part that “[b]efore . . . a child-placing agency may issue a verification certificate for an agency foster home, the . . . child-placing agency must obtain information relating to each family violence report at the applicant’s residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.”). Section 749.2447(7) provides a child-placing agency must obtain, document, and assess, in part, the following information about a prospective foster home:

The results of criminal history and central registry background checks conducted on the prospective foster parents[.] . . . With respect to law enforcement service call information, [the child-placing agency] *must do the following*:

(A) *Obtain service call information from the appropriate law enforcement agency for the prospective foster parents' addresses for the past two years.* Discuss with the prospective foster parents any service call information that [the child-placing agency] obtain[s] from a law enforcement agency and the facts surrounding the incident.

...

(C) Assess and document information obtained from law enforcement and any discussion with the prospective foster parents in the foster home screening.

40 T.A.C. § 749.2447(7)(A), (C) (emphasis added); *see id.* § 749.2445(a); *see id.* §§ 745.21(8) (defining “child-placing agency”), (32) (defining “permit”), (33) (defining “permit holder”), 749.41(1) (defining “you” as applicant or permit holder), .43 (words and terms in chapter 749 have meanings assigned under section 745.21). Thus, section 749.2447(7) of title 40 of the Texas Administrative Code requires a child-placing agency to obtain all service call information for a two year period for service calls to the addresses of prospective foster parents from appropriate law enforcement agencies. *See id.* § 749.2447(7). Accordingly, we find a child-placing agency licensed by DFPS under chapter 42 of the Human Resources Code has a right of access to this information under section 749.2447(7) when it is obtained for the purpose of verifying a prospective foster home pursuant to the requirements of section 749.2445.

In this instance, the requestor is seeking all police responses to two specified addresses for the previous two years. Accordingly, we conclude the requestor generally has a right of access to the requested information pursuant to section 749.2447(7) of title 40 of the Texas Administrative Code. Therefore, we must address the conflict between the access provided under section 749.2447(7) and the confidentiality provided under section 58.007(c) of the Family Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See Gov't Code* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevails); *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). While section 58.007(c) generally makes juvenile law enforcement records confidential with respect to the general public, section 749.2447(7) requires release of information for a specified address and time period to a specified type of

requestor in a certain circumstance — a child-placing agency verifying a foster home at that address. *See* Fam. Code § 58.007(c); 40 T.A.C. § 749.2447(7). Thus, the statutory right of access granted to the requestor by section 749.2447(7) of title 40 of the Texas Administrative Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Consequently, the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Instead, the city must release the submitted information to this requestor pursuant to section 749.2447(7) of title 40 of the Texas Administrative 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/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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 618208

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.