



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2017

Ms. Annette Vargas
Clerk
Milam County Sheriff's Office
512 North Jefferson, Suite A
Cameron, Texas 76520

OR2017-02384

Dear Ms. Vargas:

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# 644285.

The Milam 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 information protected by other statutes, such as section 58.007 of the Family Code, which provides, in part:

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

Fam. Code § 58.007(c). 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). The submitted information pertains to a juvenile suspect who was ten years of age or older and under seventeen years of age at the time of the incident at issue. Further, the submitted information involves delinquent conduct or conduct indicating a need for supervision that occurred on or 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). It does not appear that any of the exceptions in section 58.007 apply; therefore, the submitted information is generally confidential under section 58.007(c) of the Family Code.

In this instance, however, the requestor is a representative of the Adult Protective Services (“APS”) division of the Texas Department of Family and Protective Services (“DFPS”). Under chapter 48 of the Human Resources Code, the duties of DFPS include 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 of the Human Resources Code provides, in part:

(a) [DFPS] or state another 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 person 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 agency that requested the record or document.

Id. § 48.154(a). The request for information reflects the requestor seeks the submitted information for purposes of an APS investigation. Consequently, we understand DFPS is in need of this information in order to perform its duties under chapter 48 of the Human

Resources Code, which include investigation of abuse, neglect, or exploitation of an elderly person or person with a disability. *See id.* §§ 48.151, .152. Thus, because the requestor is seeking information needed to perform the duties of DFPS under chapter 48, the requestor has a right of access to the submitted information under section 48.154 of the Human Resources Code. Therefore, there is a conflict between the provisions of section 58.007(c) of the Family Code and section 48.154 of the Human Resources Code. 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 that the legislature intended the general provision to prevail. *See Gov't Code* § 311.026(b); *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). Section 48.154 gives one specific requestor, DFPS, access to particular information relating to an investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See Hum. Res. Code* § 48.154(a). Conversely, section 58.007(c) prohibits any member of the public from obtaining any and all law enforcement records of any incident in which a juvenile is engaged in delinquent conduct or conduct indicating a need for supervision occurring on or after September 1, 1997. *See Fam. Code* § 58.007. Accordingly, with regard to the conflict between section 58.007(c) and section 48.154, we find section 48.154 is the more specific statute in this instance. Additionally, we note section 48.154 is the later enacted statute.¹ Thus, we conclude section 48.154 is an exception to the confidentiality of section 58.007(c) for the information it covers. Accordingly, section 48.154 prevails over section 58.007(c).

You also assert the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Section 552.101 also encompasses information protected by section 261.201, which provides, in relevant part, 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

¹The predecessor to section 48.154, section 48.0385 of the Human Resources Code, was enacted after section 51.14 of the Family Code, the predecessor to section 58.007. Act of May 24, 1993, 73d Leg., R.S., ch. 651, § 1, 1993 Tex. Gen. Laws 2436 (Vernon) (codified as section 48.0835 of the Human Resources Code).

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). You assert the submitted information was used or developed in an investigation by the sheriff's office 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 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.

As stated above, the requestor is with the APS division of DFPS, which needs the submitted information to perform its duties under chapter 48 of the Human Resources Code. *See* Hum. Res. Code §§ 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 sheriff's office determines release of the submitted information is not consistent with the Family Code, then the sheriff's office 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. *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 sheriff's office determines the release of the submitted information is consistent with the Family Code, then the sheriff's office must release the submitted 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, appearing to read "Cole Hutchison", with a long horizontal flourish extending to the right.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 644285

Enc. Submitted documents

c: Requestor
(w/o enclosures)