



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 19, 2017

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2017-08378

Dear Ms. Aguilar:

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# 654015 (CCPD File No. LHsu1).

The Corpus Christi Police Department (the "department") received a request for all records pertaining to a named individual. You state the department will release some information to the requestor. 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 "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, in 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 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 case numbers 1406060045, 03-044431, 03-005660, 02-072974, 01-075828, and 96-043580 were used or developed in investigations of alleged or suspected child abuse or neglect. *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. You inform us the department has not adopted a rule governing the release of this type of information. Therefore, we conclude case numbers 1406060045, 03-044431, 03-005660, 02-072974, 01-075828, and 96-043580 are confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). However, we find you have failed to demonstrate any of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Therefore, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In this instance, we note the requestor identifies herself as an investigator for the Texas Medical Board (the “board”). Section 153.006 of the Occupations Code provides, in part, “[t]he board may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant.” Occ. Code § 153.006(a). In this instance, the board is seeking criminal records pertaining to a license applicant. However, we note the license applicant about whom the requestor is seeking information is named as a victim in case numbers 1406060045, 03-044431, 03-005660, 02-072974, 01-075828, and 96-043580. The requestor is not seeking criminal record information about the individuals named suspects or offenders in these cases so as to implicate the access provided by section 153.006 of the Occupations Code. Thus, we find the requestor does not have a right of access to case numbers 1406060045, 03-044431, 03-005660, 02-072974, 01-075828, and 96-043580. Accordingly, the department must withhold case numbers 1406060045, 03-044431, 03-005660, 02-072974, 01-075828, and 96-043580 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 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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007 of the Family Code). 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 conduct at issue. *See id.* § 51.02(2). Upon review, we find case numbers 01-052331, 01-042737, 01-042371, 00-053952, 99-059108, and 97-058817 involve children engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Thus, case numbers 01-052331, 01-042737, 01-042371, 00-053952, 99-059108, and 97-058817 constitute juvenile law enforcement records that are generally confidential pursuant to section 58.007(c).

As noted above, however, the requestor is an investigator for the board, and has a right of access to criminal records of a license applicant under section 153.006 of the Occupations Code. Thus, there is a conflict between the confidentiality provisions of section 58.007(c) of the Family Code and section 153.006 of the Occupations 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 153.006 gives one specific requestor, the board, access to particular information relating to a license holder or license applicant. *See Occ. Code* § 153.006(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 153.006, we find section 153.006 is the more specific statute in this instance.

Additionally, we note section 153.006 is the later enacted statute.<sup>1</sup> Thus, we conclude section 153.006 is an exception to the confidentiality of section 58.007(c) for the information it covers. Accordingly, section 153.006 prevails, and the department may not withhold case numbers 01-052331, 01-042737, 01-042371, 00-053952, and 99-059108 from the board under section 58.007(c).

However, we note the requestor is seeking information about an individual who is listed as a witness in case number 97-058817. The requestor is not seeking criminal record information about the individuals named as juvenile suspects or offenders in this report so as to implicate the access provided by section 153.006 of the Occupations Code. *See* Occ. Code § 153.006. Thus, we find the requestor does not have a right of access to case number 97-058817. Accordingly, the department must withhold case number 97-058817 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note some of the remaining information involves juvenile conduct that occurred before September 1, 1997. Law enforcement records pertaining to juvenile conduct that occurred before January 1, 1996 are governed by former section 51.14(d) of the Family Code, which was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. This office has concluded that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187. It chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997 are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. Case number 97-027074 involves juvenile conduct that occurred on May 2, 1997; therefore, this information is not confidential under section 51.14 or section 58.007 and it may not be withheld pursuant to section 552.101 of the Government Code on either basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered

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<sup>1</sup>*See* Act of May 28, 1999, 76th Leg., R.S. ch. 388, § 1, 1999 Tex. Gen. Laws 1473.

intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, the board's statutory right of access to an applicant's criminal records under section 153.006 prevails over common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the department may not withhold any information pursuant section 552.101 in conjunction with common-law privacy.

We note the remaining information contains information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> Gov't Code § 552.130(a)(1). Accordingly, we find the information we have marked is confidential under section 552.130 of the Government Code.

However, we must address the conflict between the confidentiality provided by section 552.130 of the Government Code and the right of access provided by section 153.006 of the Occupations Code. A statutory right of access prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4, 451. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. *See* Gov't Code § 552.130(b) (information described by section 552.130(a) may only be released in manner authorized by chapter 730 of Transportation Code). As stated above, when 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 id.* § 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.). Section 153.006 generally provides the board access to criminal record reports regarding a license holder or license applicant. *See* Occ. Code § 153.006(a). However, section 552.130 specifically protects motor vehicle record information. *See* Gov't Code § 552.130. Furthermore, although section 153.006 was enacted later than section 552.130, there is no evidence the legislature intended section 153.006 to prevail over section 552.130. *See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7, 31. We therefore conclude, notwithstanding section 153.006, the department must withhold the information we have marked under section 552.130 of the Government Code.

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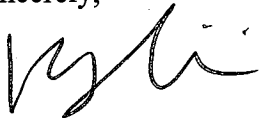
<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department must withhold case numbers 1406060045, 03-044431, 03-005660, 02-072974, 01-075828, and 96-043580 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold case number 97-058817 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>3</sup>

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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 654015

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note the requestor has a special right of access to the information being released in this instance. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.