



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 26, 2017

Mr. Jeremy R. Page  
Counsel for the City of Euless  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2017-08826

Dear Mr. Page:

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# 654794.

The Euless Police Department (the "department"), which you represent, received a request for all information pertaining to a named individual. A second request, from the individual named in the first request, seeks offense reports pertaining to several specified incidents involving the second requestor. The department states it is withholding social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> The department also states it is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

---

<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

Initially, we note the department submitted a report related to only one of the incidents specified by the second requestor. To the extent any additional information responsive to the instant requests existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007(c) makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads as follows:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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 involves 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). Thus, this information is generally confidential under section 58.007(c). In this instance, the second requestor is one of the juvenile offenders listed in the submitted report. Therefore, the second requestor has a right to inspect information concerning himself under section 58.007(e), and the submitted information may not be withheld from the second requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. *Id.* § 58.007(e). However, section 58.007(j)(1) provides any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the requestor's child must be redacted. *See id.* § 58.007(j)(1). Accordingly, the department must withhold from the second requestor the personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the second requestor that we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, we will address additional exceptions to disclosure of the submitted information with respect to the second requestor.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the department must withhold from the second requestor the public citizens' dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining dates of birth you seek to withhold on this basis relate to individuals who have been de-identified and whose

privacy interests are thus protected. Therefore, the department may not withhold the remaining dates of birth you marked under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, 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. *See Gov't Code § 552.130*. The department must withhold from the second requestor the motor vehicle record information we have marked under section 552.130 of the Government Code.

We now turn to the availability of the submitted information with respect to the first requestor. As noted above, the submitted information is generally confidential pursuant to section 58.007(c) of the Family Code. It does not appear any of the exceptions in section 58.007 apply. Therefore, the department must generally withhold the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we note the first requestor in this instance is a recruiter for the United States Navy (the "Navy") and the individual named in the request may be a potential enlistee in the Navy. The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into the armed services. 5 U.S.C. § 9101(b)(1)(A) (iii); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Navy has a right to the criminal history record information ("CHRI") of state and local criminal justice agencies when it receives the consent of the individual being investigated for release of such information. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(7) (DoD includes the Department of the Navy). CHRI is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release" but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2).

Federal law provides the Navy's right of access to CHRI preempts state law. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). Therefore, we conclude the Navy's right of access under federal law preempts the confidentiality of section 58.007(c) of the Family Code. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Federal law, however, also provides the Navy's right of access is contingent on the request being made for eligibility or retention purposes, and on receiving

written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(b)(1)(A)(iii), (c).

The first requestor may have made the instant request for information for recruiting purposes. However, we are unable to determine whether the individual being investigated has provided the Navy with a signed authorization for the release of the information at issue. Accordingly, we rule in the alternative. If the first requestor seeks the information at issue for recruiting purposes and if the first requestor provides a signed written consent for release of CHRI from the individual being investigated, then the department must release CHRI pertaining to the named individual from the submitted information to the first requestor. In that event, the department must generally withhold the remainder of the submitted information from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the first requestor does not seek the information at issue for recruiting purposes or if the first requestor does not provide a written consent for release of the information, then the department must generally withhold the submitted information from the first requestor in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code.

We note, however, the submitted information includes a CR-3 accident report. Section 552.101 of the Government Code also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 of the Transportation Code applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the first requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b) with respect to the first requestor, and the department must withhold it from the first requestor under section 552.101 of the Government Code. However, section 550.065(c-1) requires the department to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Thus, although the submitted information is generally confidential under section 58.007(c) of the Family Code with respect to the first requestor, section 550.065(c-1) requires the redacted accident report to be released to the first requestor. Therefore, we must address the conflict between the confidentiality provided under section 58.007(c) of the Family Code and

the right of access provided under section 550.065(c-1) of the Transportation Code. 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 58.007(c) generally pertains to all juvenile law enforcement records, section 550.065(c-1) specifically provides access only to redacted accident reports of the type at issue. Therefore, we conclude the access to redacted accident reports provided under section 550.065(c-1) is more specific than, and prevails over, section 58.007(c). Thus, the department may not withhold the redacted CR-3 accident report from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Therefore, the department must release the redacted CR-3 accident report to the first requestor pursuant to section 550.065(c-1) of the Transportation Code.

We note the second requestor is a person listed under section 550.065(c). The department seeks to withhold dates of birth of public citizens in the CR-3 accident report under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note a statutory right of access prevails over the common law. *See 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); *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). Thus, no portion of the CR-3 accident report may be withheld under section 552.101 of the Government Code on the basis of common-law privacy. Accordingly, the department must generally release the accident report to the second requestor pursuant to section 550.065(c) of the Transportation Code.

The department has also highlighted portions of the submitted CR-3 accident report that it seeks to withhold from the second requestor under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code and under section 552.130 of the Government Code. *See* Fam. Code § 58.007(j)(1); Gov't Code § 552.130(a)(1)-(2). As noted above, 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*, 555 S.W. 2d at 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Further, we note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 550.065(c) of the

Transportation Code and the confidentiality provided under section 58.007(j)(1) of the Family Code and 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); Open Records Decision Nos. 598 (1991), 583 (1990), 451. Section 550.065(c) specifically provides access only to accident reports of the type at issue. However, section 58.007 of the Family Code generally pertains to all juvenile law enforcement records and section 552.130 generally excepts motor vehicle record information maintained in any context. Additionally, we note section 550.065(c) is the later enacted statute. *See Gov’t Code* § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, the statute latest in enactment prevails). Thus, we conclude the access to accident reports provided under section 550.065(c) is more specific than, and prevails over, the general confidentiality provided under section 58.007(j)(1) of the Family Code and section 552.130 of the Government Code. Accordingly, the department may not withhold any portion of the accident report from the second requestor under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code or under section 552.130 of the Government Code.


In summary, the department must release the redacted CR-3 accident report to the first requestor pursuant to section 550.065(c-1) of the Transportation Code and must release the entirety of the CR-3 accident report to the second requestor pursuant to section 550.065(c) of the Transportation Code. The department must generally release the remaining information to the second requestor pursuant to section 58.007(e) of the Family Code; however, in releasing such information, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) and common-law privacy and under section 552.130 of the Government Code. The department must generally withhold the remaining information from the first requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; however, if the first requestor seeks the information at issue for recruiting purposes and if the first requestor provides a signed written consent for release of CHRI from the individual being investigated, then the department must also release CHRI pertaining to the named individual from the submitted information to the first requestor.

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 that reads "Claire Morris Sloan". The signature is written in a cursive style with a long horizontal flourish at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 654794

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)