



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 1, 2017

Ms. Teresa J. Brown  
Senior Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2017-09303

Dear Ms. Brown:

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# 656037 (#PERA020717).

The Plano Police Department (the "department") received a request for information pertaining to a named individual.<sup>1</sup> 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.

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<sup>1</sup>We note the department failed to comply with the procedural requirements of section 552.301 of the Government Code by failing to meet its 10-business-day and 15-business day deadlines. *See* Gov't Code § 552.301(b) (requiring a governmental body to ask for the attorney general's decision and to state the exceptions that apply within ten business days of receiving the written request), (e) (requiring a governmental body to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents). Nonetheless, the applicability of section 552.101 of the Government Code can constitute a compelling reason sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the department's assertions under this exception.

Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which 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.

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 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). It does not appear 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, 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 licensee. 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 do not believe the legislature intended for the board's access to be limited by section 58.007(c) of the Family Code. Accordingly, section 153.006 prevails, and the department may not withhold the submitted information from the board under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses 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). You state the submitted information consists of information 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 chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We have no indication the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). 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." Fam. Code § 261.201(a).

As noted above, however, the requestor is an investigator for the board, and has a right of access to criminal records of a licensee under section 153.006 of the Occupations Code. If the department determines that release of this information is not consistent with the purposes

of the Family Code, then the board does not have a right of access to this information and it must be withheld in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. However, if the department determines that release of the submitted information is consistent with the purposes of the Family Code, then it must release the submitted information to the board.

We note portions of the submitted information contain driver's license information subject to section 552.130 of the Government Code.<sup>2</sup> 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. Gov't Code § 552.130(a)(1). Accordingly, we find the marked driver's license information is confidential under section 552.130 of the Government Code.

Thus, there is a 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 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). 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). 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 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.). Although section 153.006 provides the board access to criminal record reports regarding a license holder or license applicant, section 552.130 of the Government Code specifically protects motor vehicle record information. Furthermore, section 552.130 of the Government Code was enacted later than section 153.006. *See* Act of Aug. 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7 (enacting statutory predecessor to section 153.006); Act of June 20, 1997, 75th Leg., R.S., ch. 1187 § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting section 552.130). We therefore conclude, notwithstanding section 153.006, the department must withhold the driver's license information we marked under section 552.130 of the Government Code.

In summary, if the department determines that release of this information is not consistent with the purposes of the Family Code, then the board does not have a right of access to the

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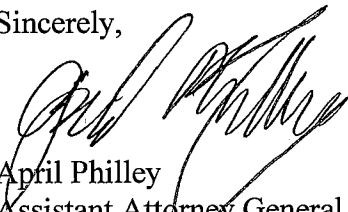
<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

submitted information and it must be withheld in its entirety under section 552.101 in conjunction with section 261.201(a) of the Family Code. If the department determines that release of the submitted information is consistent with the purposes of the Family Code, then it must withhold the driver's license information we have marked under section 552.130 of the Government Code and release the remaining information pursuant to section 153.006 of the Occupations 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](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,



April Philley  
Assistant Attorney General  
Open Records Division

AP/sb

Ref: ID# 656037

Enc. Submitted documents

c: Requestor  
(w/o enclosures)