



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 17, 2017

Ms. Paige Mebane  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2017-10659

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# 656317 (Request# W059264).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual. 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. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides, in pertinent 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 of the Family Code. *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). You assert the submitted information is confidential under section 58.007(c). Upon review, we find the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are generally confidential pursuant to section 58.007(c) of the Family Code.

However, section 58.007(e) of the Family Code provides, “[l]aw 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 [of the Family Code or] a criminal justice agency as that term is defined by Section 411.082, Government Code[.]” *Id.* § 58.007(e). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” Gov’t Code § 411.082(3)(A).

We note the requestor is a representative of the Federal Probation System (the “probation office”). We understand the probation office is a criminal justice agency for purposes of section 58.007(e). Accordingly, the requestor has a right to inspect the submitted information under section 58.007(e) of the Family Code, and it may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We also note a statutory right of access prevails over the common law. *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).

Section 552.101 of the Government Code also encompasses section 143.090 of the Local Government Code. You state the City of Forth Worth is a civil service city under

chapter 143 of the Local Government Code. Section 143.090 of the Local Government Code provides the following:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;  
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You state the photographs at issue depict department police officers. You do not inform us any of the police officers depicted in the photographs at issue have provided the department with written consent regarding the release of the photographs. You indicate none of the remaining exceptions under section 143.090 are applicable. Therefore, the photographs you have indicated are confidential under section 143.090 of the Local Government Code and must generally be withheld under section 552.101 of the Government Code.

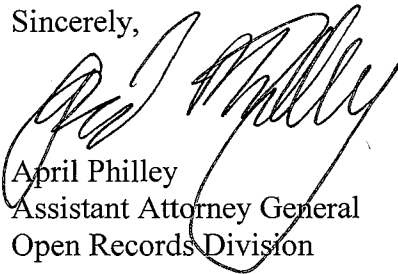
Thus, we must address the conflict between the confidentiality provided by section 143.090 of the Local Government Code and the requestor's right of access under section 58.007(e) of the Family Code. Where information falls within both general and specific statutory provisions, the specific provision 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); *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). Section 58.007(e) of the Family Code generally applies to all juvenile law enforcement records, while section 143.090 of the Local Government Code specifically protects photographs depicting police officers and lists specific circumstances in which information may be released. Furthermore, section 143.090 of the Local Government Code was enacted later than section 58.007 of the Family Code. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 53, 100, 106, 1995 Tex. Gen. Laws 2517 (enacting section 58.007 of the Family Code); Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., ch. 300, § 1, 2011 Tex. Gen. Laws 917 (enacting section 143.090 of the Local Government Code). Thus, the confidentiality granted

by section 143.090 of the Local Government Code prevails over the more general statutory right of access granted to the requestor by section 58.007(e) of the Family Code. Therefore, the department must withhold the photographs you have indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The remaining information must be released.

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# 656317

Enc. Submitted documents

c: Requestor  
(w/o enclosures)