



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 4, 2017

Mr. Stephen D. Gates  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2017-22645

Dear Mr. Gates:

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# 684840 (City ID# M021791-091217).

The Midland Police Department (the "department") received a request for a specified incident report involving 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. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(b)); *see also* Fam. Code § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). We understand you to raise section 58.008(b) of the Family Code.<sup>1</sup> Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.008(b).

We note the submitted information lists the named individual as a suspect who was older than seventeen at the time of the conduct. Although the requestor is a representative of the Federal Bureau of Investigation (the “FBI”), he is seeking information about the adult arrestee and not the child arrestee identified in the submitted information. Thus, we conclude the requestor does not have a right of access to the submitted information under section 58.008(d) of the Family Code. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 13 (to be codified at Fam. Code § 58.008(d)). (providing “[l]aw enforcement records concerning a child may be inspected or copied by a criminal justice agency as that term is defined by Section 411.082, Government Code[.]”). Therefore, the submitted information is generally confidential under section 58.008 of the Family Code.

We note, however, section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information [(“CHRI”)] maintained by the [Texas Department of Public Safety] about a person.” *See id.* § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Texas

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746 (S.B. 1304), § 21.

Department of Public Safety] [CHRI] maintained by the [Texas Department of Public Safety] that relates to another person is authorized to:

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). We note CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). We note the submitted information contains CHRI of the individual named in the request. However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

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). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Crim. Proc. Code art. 60.01(1). We note the FBI is a criminal justice agency as defined by section 411.082, and the requestor intends to use the CHRI for a criminal justice purpose. Consequently, pursuant to section 411.087(a)(2), the department must generally make available to the requestor information pertaining to the named individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Thus, there is a conflict between the confidentiality provided by section 58.008(b) of the Family Code and the requestor’s right of access under section 411.087(a)(2) of the Government Code.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov’t Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *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). In this instance, although section 58.008(b) of the Family Code generally makes juvenile law enforcement records confidential, section 411.087(a)(2) of the Government Code gives specific types of requestors, criminal

justice agencies, access to particular information, CHRI, for a criminal justice purpose. Thus, the statutory right of access granted to the requestor by section 411.087(a)(2) of the Government Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code. Therefore, notwithstanding section 58.008(b), the department must make available to this requestor information pertaining to the named individual that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family 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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/gw

Ref: ID# 684840

Enc. Submitted documents

c: Requestor  
(w/o enclosures)