



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2017

Mr. Adam Anderson
Assistant County Attorney
Montgomery County Attorney's Office
501 North Thompson Street, Suite 300
Conroe, Texas 77301

OR2017-23796

Dear Mr. Anderson:

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# 686105 (File# 17PIA418).

The Montgomery County Constable, Precinct 3 (the "constable's office") received a request for a specified investigative report. 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). 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 understand you to argue the submitted information is subject to section 58.008(b) of the Family Code.¹ 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. Therefore, the constable’s office must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

We note, however, the submitted information contains a CR-3 accident report form that is subject to chapter 550 of the Transportation Code. 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 requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the constable’s office must withhold it from the first requestor under section 552.101 of the Government Code. However, section 550.065(c-1) requires the constable’s office to create a redacted accident

¹Although 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.

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 58.008(b) of the Family Code, section 550.065(c-1) requires the redacted accident report to be released to the requestor. Therefore, we must address the conflict between the confidentiality provided under section 58.008(b) 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 58.008(b) 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 58.008(b). Thus, the constable's office may not withhold the redacted CR-3 accident report from the requestor under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. Therefore, the constable's office must release the redacted CR-3 accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code and 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, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 686105

Enc. Submitted documents

c: Requestor
(w/o enclosures)