



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2017

Mr. William V. Scazzero
Counsel to the Town of Hickory Creek
Hayes, Berry, White & Vanzant, L.L.P.
P.O. Box 50149
Denton, Texas 76206

OR2017-25143

Dear Mr. Scazzero:

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# 682965.

The Town of Hickory Creek (the "town"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions 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

¹We understand you to raise section 552.101 of the Government Code based on your arguments. Additionally, although you raise section 552.103 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

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); Act of May 19, 2017, 85th Leg., R.S., S.B. 1488, § 7.002 (to be codified as amendments to Fam. Code § 51.03(b)); Act of May 30, 2017, 85th Leg., R.S., H.B. 29, § 21 (to be codified as amendments to Fam. Code § 51.03(b)) (defining “conduct indicating a need for supervision”). We understand the town to assert the submitted information is subject to section 58.008(b).² 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; therefore, the town 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 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

²Although the town argues the information at issue is made confidential by 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.

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 has not demonstrated he is a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b) and the town must withhold it from the requestor under section 552.101 of the Government Code. However, section 550.065(c-1) requires the town 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 58.008(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 town 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. Furthermore, although you also assert section 552.108 of the Government Code to withhold this information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, 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). Because section 552.108 is a general exception under the Act, the requestor's statutory access under section 550.065(c-1) prevails and the town may not withhold the information at issue under section 552.108 of the Government Code. Therefore, the town must release the redacted CR-3 accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code. The town must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.³

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 682965

Enc. Submitted documents

c: Requestor
(w/o enclosures)