



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2017

Ms. Dawn Roberts
Assistant City Attorney
Legal Division
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2017-29164

Dear Ms. Roberts:

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# 690192 (ORR# 46269).

The Arlington Police Department (the "department") received a request for information pertaining to a specified arrest of a named individual. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). We understand the department to assert the submitted information is subject to section 58.008(b).¹ Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. 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). The submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). Although the requestor is a representative of the Texas State Board of Pharmacy Police Department (the “board”), she is seeking information about the adult arrestee and not about the juvenile offender 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 id.* § 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(b) of the Family Code.

In this instance, as we noted, the requestor is a representative of the board and may have a right of access to some of the information at issue. Section 411.122(a) of the Government Code provides, in part, as follows:

[A]n agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information [“CHRI”] maintained by the [Department of Public Safety] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.

Gov’t Code § 411.122(a). The board is specifically subject to section 411.122 of the Government Code. *See id.* § 411.122(d)(14). In addition, section 411.087(a) of the Government Code provides, in pertinent part, the following:

¹Although the department 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, § 21, 2017 Tex. Sess. Law Serv. 3173, 3187.

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Department of Public Safety] [CHRI] maintained by the [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.

Gov't Code § 411.087(a)(2). 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." *Id.* § 411.082(2). Thus, the submitted report contains CHRI related to the named individual. Therefore, if the named individual is an applicant for a license from the board, is the holder of a license from the board, or requested a determination of eligibility for a license from the board, then the requestor is authorized to obtain the submitted CHRI pursuant to sections 411.087(a)(2) and 411.122 of the Government Code. *See* Gov't Code §§ 411.087(a)(2), .122(a). Accordingly, we must address the conflict between the confidentiality provided by section 58.008(b) of the Family Code and the requestor's possible right of access to the submitted CHRI under sections 411.087(a)(2) and 411.122 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 id.* § 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, section 58.008(b) of the Family Code generally makes juvenile law enforcement records confidential. Fam. Code § 58.008. However, section 411.122 of the Government Code, in concert with section 411.087(a)(2) of the Government Code, gives the board access to CHRI found in records involving an individual who is an applicant for a license from the board, is the holder of a license from the board, or requests a determination of eligibility for a license from the board. *See* Gov't Code §§ 411.087(a)(2), .122(a)(1), .122(d)(14). Thus, the statutory right of access granted to the board by sections 411.087(a)(2) and 411.122 of the Government Code prevails over the more general confidentiality provisions of section 58.008(b) of the Family Code. Therefore, if the named individual is an applicant for a license from the board, is the holder of a license from the board, or requested a determination of eligibility for a license from the board, then notwithstanding section 58.008(b), the department must make CHRI about the named individual available to this requestor pursuant to sections 411.122 and 411.087(a)(2) of the Government 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. However, if the named individual is not such an individual, then the department must withhold the

submitted information in its entirety 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 690192

Enc. Submitted documents

c: Requestor
(w/o enclosures)