



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2019

Ms. DeAndrea Bradford
Assistant City Attorney
Arlington Police Department
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2019-00212

Dear Ms. Bradford:

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# 745471 (Ref. No. 67338).

The Arlington Police Department (the "department") received a request for arrest records for a named individual. You state the department will release some information. 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 representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the present request because it does not consist of records pertaining to an arrest of the named individual. This ruling does not address the public availability of the non-responsive information, which we have marked, and the department need not release it in response to this request.²

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

²As we are able to make this determination, we need not address your arguments against disclosure of this 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 of the Government Code encompasses information protected by 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)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find report numbers 1999-09013612, 1999-09010988, 1999-09006876, 1998-03240388, and 1998-03100212 involve juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Therefore, report numbers 1999-09013612, 1999-09010988, 1999-09006876, 1998-03240388, and 1998-03100212 are generally confidential under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

However, the requestor is a licensure analyst for the Texas Medical Board and may have a right of access to report numbers 1999-09013612, 1999-09010988, 1999-09006876, 1998-03240388, and 1998-03100212. Section 153.006 of the Occupations Code provides, in part, “[t]he board may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant.” Occ. Code § 153.006(a). The requestor seeks access to criminal records pertaining to an individual who may be an applicant for or the holder of a license from the board. If the individual is an applicant for or the holder of a license from the board, then the requestor generally has a right of access

to report numbers 1999-09013612, 1999-09010988, 1999-09006876, 1998-03240388, and 1998-03100212 under section 153.006(a). In that case, we must address the conflict between the confidentiality of section 58.008(b) of the Family Code and the right of access provided by section 153.006(a) of the Occupations 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); *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 153.006 gives one specific requestor, the board, access to particular information relating to a license holder or license applicant. *See* Occ. Code § 153.006(a). However, section 58.008(b) prohibits any member of the public from obtaining any and all law enforcement records of any incident in which a juvenile is engaged in delinquent conduct or conduct indicating a need for supervision occurring before, on, or after September 1, 1997. *See* Fam. Code § 58.008. Therefore, with regard to the conflict between section 58.008(b) and section 153.006(a), we find section 153.006 is the more specific statute in this instance. Additionally, we do not believe the legislature intended for the board's access to be limited by section 58.008(b) of the Family Code. Accordingly, section 153.006 prevails, and, if the individual is an applicant for or the holder of a license from the board, then the department may not withhold report numbers 1999-09013612, 1999-09010988, 1999-09006876, 1998-03240388, and 1998-03100212 from the board 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 an applicant for or the holder of a license from the board, then the department must withhold report numbers 1999-09013612, 1999-09010988, 1999-09006876, 1998-03240388, and 1998-03100212 in their entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

You also claim section 261.201 of the Family Code for some of the submitted information. Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Report numbers 1999-09013612, 1999-09010988, and 1998-03100212 were used or developed in investigations of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find report numbers 1999-09013612, 1999-09010988, and 1998-03100212 are subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information, and, therefore we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold report numbers 1999-09013612, 1999-09010988, and 1998-03100212 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, section 261.201(a) provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a).

As noted above, the requestor is a licensure analyst with the board and may have a right of access to report numbers 1999-09013612, 1999-09010988, and 1998-03100212 under section 153.006(a) of the Occupations Code. Thus, if the individual is an applicant for or the holder of a license from the board and the department determines the release of the submitted information would be for purposes consistent with the Family Code, then report numbers 1999-09013612, 1999-09010988, and 1998-03100212 may not be withheld under section 261.201 of the Family Code. If the department determines release is not consistent with the Family Code, the department must withhold report numbers 1999-09013612, 1999-09010988, and 1998-03100212 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If the individual at issue is an applicant for or the holder of a license from the board and release is consistent with purposes of the Family Code for report numbers 1999-09013612, 1999-09010988, and 1998-03100212, we note portions of the submitted reports contain motor vehicle record information subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1). Accordingly, we find the department must

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Thus, there is a conflict between the confidentiality provided by section 552.130 of the Government Code and the right of access provided by section 153.006 of the Occupations Code. A statutory right of access prevails over the Act's general exceptions to disclosure. *See* 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 exceptions to disclosure under Act). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. *See* Gov't Code § 552.130(b) (information described by section 552.130(a) may only be released in manner authorized by chapter 730 of Transportation Code). Although section 153.006 provides the board access to criminal record reports regarding a license holder or license applicant, section 552.130 of the Government Code specifically protects motor vehicle record information. Furthermore, section 552.130 of the Government Code was enacted later than section 153.006. *See* Act of Aug. 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7 (enacting statutory predecessor to section 153.006); Act of June 20, 1997, 75th Leg., R.S., ch. 1187 § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting section 552.130). We therefore conclude, notwithstanding section 153.006, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the named individual is not an applicant for or the holder of a license from the board, the department must withhold report numbers 1999-09013612, 1999-09010988, 1999-09006876, 1998-03240388, and 1998-03100212 in their entireties under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the department determines release is not consistent with the Family Code, the department must withhold report numbers 1999-09013612, 1999-09010988, and 1998-03100212 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the individual at issue is an applicant for or the holder of a license from the board and release is consistent with purposes of the Family Code for report numbers 1999-09013612, 1999-09010988, and 1998-03100212, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code and must release the remaining information to this requestor pursuant to section 153.006(a) of the Occupations Code.⁴

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.

⁴We note the information being released in this instance is confidential with respect to the general public. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Deborah Southerland
Attorney
Open Records Division

DS/eb

Ref: ID# 745471

Enc. Submitted documents

c: Requestor
(w/o enclosures)