



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2019

Ms. Amy Bass-Domel
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2019-05303

Dear Ms. Bass-Domel:

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# 755125.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified arrest of a named individual. The sheriff's office claims the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions 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 261.201 of the Family Code, which provides, in relevant part, the following:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *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) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, this information is within the scope of section 261.201(a). The sheriff’s office does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find this information is generally confidential under section 261.201(a). However, this information is also subject to section 58.008 of the Family Code. Therefore, we will address the applicability of section 58.008 to the information at issue

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part, the following:

(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 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.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

...

(2) a criminal justice agency, as defined by Section 411.082, Government Code[.]

Id. § 58.008(b), (d)(2); *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). Upon review, we agree the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b).

However, the requestor is a representative of the Federal Bureau of Investigation’s National Instant Criminal Background Check System. Section 58.008(d)(2) of the Family Code gives a “criminal justice agency, as defined by section 411.082 of the Government Code a right of access to juvenile law enforcement records. *See id.* § 58.008(d)(2). 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). Thus, we find the requestor is requesting the information on behalf of a criminal justice agency as provided by section 58.008(d) of the Family Code. Therefore, the requestor generally has a right of access under section 58.008(d)(2) to the submitted information. A statutory right of access prevails over the Act’s general exceptions to public disclosure and common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); 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); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the sheriff’s office may not withhold the submitted information under section 552.101 in conjunction with section 58.008(b) of the Family Code or common-law privacy, under section 552.108 of the Government Code, or under section 552.147 of the Government Code. Nonetheless, as discussed above, the information is also subject to section 261.201(a) of the Family Code, and records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See Fam. Code* § 261.201(a). Section 58.008(d)(2) is applicable state law allowing disclosure to the requestor. Therefore, the sheriff’s office must determine whether releasing the submitted information is consistent with the Family Code. Accordingly, if the sheriff’s office determines the requestor does not intend to use the submitted information for purposes consistent with the

Family Code, then it must withhold the information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we agree the motor vehicle record information that the sheriff's office has marked is generally confidential under section 552.130 of the Government Code. Therefore, we must address the conflict between access provided under section 58.008(d)(2) of the Family Code and confidentiality provided under section 552.130 of the Government Code.

Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar*, 521 S.W.2d 277. Section 58.008(d)(2) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. Because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 58.008(d)(2). Accordingly, if the sheriff's office determines the requestor intends to use the submitted information for purposes consistent with the Family Code, then it must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code, but must release the remaining information pursuant to section 58.008(d)(2) of the Family Code.

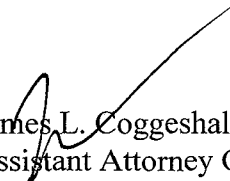
In summary, if the sheriff's office determines the requestor does not intend to use the information at issue for purposes consistent with the Family Code, then it must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the sheriff's office determines the requestor intends to use the submitted information for purposes consistent with the Family Code, then it must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code, but must release the remaining information pursuant to section 58.008(d)(2) 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 755125

Enc. Submitted documents

c: Requestor
(w/o enclosures)