



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2020

Mr. Christopher K. Austria
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-10450

Dear Mr. Austria:

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# 821863 (ORR# W096891).

The Fort Worth Police Department (the "department") received a request for specified incident reports pertaining to a named individual. The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 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 58.008(b) of the Family Code, which provides as follows:

Except as provided by Subsection (c), 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. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least ten years old and less than seventeen 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 Exhibit D involves a juvenile offender, so as to fall within the scope of section 58.008(b). The exceptions in section 58.008 do not appear to apply. Therefore, the department must generally withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

We note the requestor is a representative of the Office of the Federal Public Defender for the Northern District of Texas (the “public defender’s office”). Section 411.1272 of the Government Code provides as follows:

The office of capital and forensic writs and a public defender’s office are entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a)(2) of the Government Code reads as follows:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by [DPS] 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.

Id. § 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.” *See id.* 411.082(2). Accordingly, the requestor may have a right of access to CHRI in Exhibit D pursuant to sections 411.087(a)(2) and 411.1272. *See id.* §§ 411.087(a)(2), .1272. Therefore, we must address the conflict between confidentiality under section 58.008(b) of the Family Code and access under sections 411.087 and 411.1272 of the Government Code.

Where information falls within both general and specific statutory provisions, 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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Although section 58.008(b) generally makes juvenile law enforcement records confidential, sections 411.087 and 411.1272 of the Government Code give specific types of requestors, including the public defender's office, access to particular information, CHRI, in specific situations. See Gov't Code §§ 411.087, .1272. Thus, the statutory right of access granted to the public defender's office by sections 411.087 and 411.1272 of the Government Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code. Therefore, if the department determines Exhibit D relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must release CHRI pursuant to sections 411.087 and 411.1272 of the Government Code, but withhold the remaining information in that exhibit under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the department determines Exhibit D does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must withhold Exhibit D in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The department states Exhibit C relates to pending criminal investigations or prosecutions. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may generally withhold Exhibit C under section 552.108(a)(1) of the Government Code.

As discussed above, the department may have access to CHRI pursuant to sections 411.087 and 411.1272 of the Government Code. A statutory right of access prevails over the Act's general exceptions to public disclosure, including section 552.108 of the Government Code. 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 exception to disclosure under the Act). Therefore, if the

department determines Exhibit C relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must release CHRI from this exhibit pursuant to sections 411.087 and 411.1272 of the Government Code.

In summary, if the department determines the submitted information relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the department must release CHRI pursuant to sections 411.087 and 411.1272 of the Government Code. To the extent the information is not subject to release under sections 411.087 and 411.1272, (1) the department must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; and (2) with the exception of basic information, which the department must release, the department may withhold Exhibit C under section 552.108(a)(1) of the Government 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 821863

Enc. Submitted documents

c: Requestor
(w/o enclosures)