



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 28, 2020

Mr. L. Brian Narvaez  
Counsel for the City of McKinney  
Brown & Hofmeister, L. L. P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2020-11932

Dear Mr. Narvaez:

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# 825553 (ORR# P014108).

The City of McKinney (the "city"), which you represent, received a request for information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 the submitted information 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 submitted information is generally confidential section 58.008(b) of the Family Code.

However, the requestor is a representative of the Adult Protective Services (“APS”) division of the Texas Department of Family and Protective Services (“DFPS”). Under chapter 48 of the Human Resources Code, the duties of DFPS include investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154(a) of the Human Resources Code provides, as follows:

[DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly person or person with a disability. A person, agency, or institution that has a record or document that [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to [DFPS] or state agency that requested the record or document.

*Id.* § 48.154(a). The request for information reflects the requestor seeks the submitted information for purposes of an APS investigation. Consequently, we understand DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code, which include investigation of abuse, neglect, or exploitation of an elderly person or person with a disability. *See id.* §§ 48.151, .152. Thus, because the requestor is seeking information needed to perform the duties of DFPS under chapter 48, the requestor has a right of access to the submitted information under section 48.154 of the Human Resources Code. Therefore, we must address the conflict between confidentiality under section 58.008(b) of the Family Code and access under section 48.154 of the Human Resources Code.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *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 48.154 gives one specific requestor, DFPS, access to particular information relating to an investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See* Hum. Res. Code § 48.154(a). Conversely, section 58.008(b) generally makes juvenile law enforcement records confidential. *See* Fam. Code § 58.008. Thus, we conclude the statutory right of access granted to DFPS by section 48.154 of the Human Resources Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code. Consequently, the city must release the submitted information to this requestor pursuant to section 48.154 of the Human Resources Code.<sup>1</sup>

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/mo

Ref: ID# 825553

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup> Because the requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.