



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2020

Ms. Krystal Temple
Hood County Sheriff's Office
400 Deputy Larry Miller Drive
Granbury, Texas 76048

OR2020-14955

Dear Ms. Temple:

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# 831152.

The Hood County Sheriff's Office (the "sheriff's office") received a request for information related to a specified incident involving a named individual. You indicate you have released some information to the requestor. 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 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. This section encompasses information protected by other statutes, such as section 58.008 of the Family Code, which provides, in part:

(b) 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 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 id.* § 51.03(a) (defining “delinquent conduct” 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, 2017 Tex. Sess. Law Serv. 3173, 3187. 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). The submitted information involves a juvenile engaged in delinquent conduct, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, the submitted information is generally confidential under section 58.008(b).

Chapter 411 of the Government Code constitutes “applicable state law” in this instance. The requestor is an investigator with the Texas Department of Licensing and Regulation (“TDLR”). Sections 411.093 and 411.122 of the Government Code both provide TDLR is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who is an applicant for a license issued by TDLR. Gov’t Code §§ 411.093(1), .122(a)(1), .122(d)(10). Section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087. 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). Thus, when read together, sections 411.087, 411.093, and 411.122 of the Government Code may grant TDLR a right of access to CHRI in the submitted information.

The requestor states they are conducting a criminal background check on an individual who has applied for licensure with TDLR. Accordingly, the requestor has a right of access to CHRI about the individual pursuant to sections 411.087, 411.093, and 411.122 of the Government Code. Thus, we must address the conflict between the confidentiality provided by section 58.008(b) of the Family Code and the requestor’s right of access to the named individual’s 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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Although section 58.008(b) generally makes juvenile law enforcement records confidential, sections 411.093 and 411.122 of the Government Code, in concert with section 411.087(a)(2) of the Government Code, give TDLR access to particular information, CHRI, found in records involving particular individuals, applicants for, or a holder of, a license issued by TDLR. *See* Fam. Code § 58.008; Gov’t Code §§ 411.087(a)(2), .093, .122(a), .122(d)(10). Thus, the statutory right of access granted to TDLR by sections 411.087(a)(2), 411.093, and 411.122 of the Government Code prevails

over the more general confidentiality provisions of section 58.008(b) of the Family Code. Thus, the sheriff's office must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions 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.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/rm

Ref: ID# 831152

Enc. Submitted documents

c: Requestor
(w/o enclosures)