



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 8, 2020

Ms. Stephanie N. Neal  
Assistant City Attorney  
City of Mesquite  
P.O. Box 850137  
Mesquite, Texas 75185-0137

OR2020-15577

Dear Ms. Neal:

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# 832277.

The Mesquite Police Department (the "department") received a request for information pertaining to a named individual, including two specified incidents. You state you will redact some information pursuant to Open Records Letter No. 2015-24970 (2015).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department has not submitted information responsive to the second specified incident. To the extent information responsive to the second specified incident existed on the date the department received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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<sup>1</sup> Open Records Letter No. 2015-24970 authorizes the department to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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 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 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) (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. The juvenile must have been at least 10 years old and less than 17 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). It does not appear that any of the exceptions in section 58.008 apply; therefore, the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

However, we note the requestor is a representative of the Regional Public Defender for Capital Cases (the “public defender’s office”). Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender’s office are entitled to obtain from the [Department of Public Safety (“DPS”)] criminal history record information maintained [(“CHRI”)] 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. “Public defender’s office” has the meaning assigned by article 26.044(a) of the Code of Criminal Procedure. *Id.* § 411.082(6); *see also* Crim. Proc. Code art. 26.044(a)(4). In addition, section 411.087(a) of the Government Code provides:

(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 [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.

Gov't Code § 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 the submitted information pursuant to sections 411.087(a)(2) and 411.1272. *See id.* §§ 411.087(a)(2), .1272. Accordingly, we must address the conflict between section 58.008(b) of the Family Code and sections 411.087 and 411.1272 of the Government Code. Where information falls within both general and specific statutory provisions, the specific provisions prevail over the general statutes. *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 411.1272 and 411.087 of the Government Code give the public defender's office access to particular information 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 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 from this information 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.<sup>2</sup> However, if the department determines the submitted information 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 the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>3</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.

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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,

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/rm

Ref: ID# 832277

Enc. Submitted documents

c: Requestor  
(w/o enclosures)