



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2022

Ms. Audrea Hutson
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2022-06395

Dear Ms. Hutson:

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# 935343.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to three named individuals. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.152 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 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 sheriff’s office 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.¹

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. The sheriff’s office must generally withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

We note the requestor states she has been appointed by a court to complete an evaluation regarding the named individuals for a child custody lawsuit. Section 107.1111(a) of the Family Code reads as follows:

(a) Notwithstanding any other state law regarding confidentiality, a child custody evaluator appointed by a court is entitled to obtain records that relate to any person residing in a residence subject to a child custody evaluation from:

- (1) a local law enforcement authority;
- (2) a criminal justice agency;
- (3) a juvenile justice agency;

¹ As our ruling is dispositive, we do not address the other arguments of the sheriff’s office to withhold this information.

(4) a community supervision and corrections department created under Chapter 76, Government Code; or

(5) any other governmental entity.

Id. 107.1111(a). A “child custody evaluator” means “an individual who conducts a child custody evaluation under [subchapter D of chapter 107 of the Family Code]” and “includes a private child custody evaluator.” *Id.* § 107.101(2) (defining “child custody evaluator”). Accordingly, if the submitted information relates to a person residing in a residence subject to the child custody evaluation, then the requestor has a right of access to the information under section 107.1111(a) of the Family Code. Although the sheriff’s office seeks to withhold the submitted information under sections 552.108 and 552.152 of the Government Code and common-law privacy, 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). Thus, if the submitted information relates to a person residing in a residence subject to the child custody evaluation, then the sheriff’s office may not withhold the submitted information on those grounds. Nevertheless, because section 552.130 of the Government Code has its own access provisions, section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 107.1111(a) of the Family Code and the confidentiality provided under section 58.008(b) of the Family Code and section 552.130 of the Government Code.

Where information falls within both a general and specific provision of law, the specific provision prevails over the general. *See* Gov’t Code § 311.026; (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is the later enactment and 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). Section 107.1111(a) of the Family Code allows a right of access to records that relate to any person residing in a residence subject to a child custody evaluation. *See* Fam. Code § 107.1111(a). Conversely, section 58.008(b) of the Family Code generally prohibits any member of the public from obtaining any and all law enforcement records of any incident in which a juvenile is engaged in delinquent conduct or conduct indicating a need for supervision occurring before, on, or after September 1, 2017. *See id.* § 58.008(b). Thus, we find the statutory right of access granted to the requestor by section 107.1111(a) of the Family Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code. Nevertheless, section 552.130 specifically protects motor vehicle record information. Accordingly, we conclude the confidentiality provided under section 552.130 prevails over the statutory right of access granted to the requestor by section 107.1111(a) of the Family Code. Therefore, if the submitted information relates to

a person residing in a residence subject to the child custody evaluation, then the sheriff's office must withhold the information it has marked under section 552.130 of the Government Code, but release the remaining information pursuant to section 107.1111(a) of the Family Code.

In summary, if the submitted information relates to a person residing in a residence subject to the child custody evaluation, then the sheriff's office must withhold the information it has marked under section 552.130 of the Government Code, but release the remaining information pursuant to section 107.1111(a) of the Family Code. If the submitted information does not relate to a person residing in a residence subject to the child custody evaluation, then the sheriff's office must withhold the submitted 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

Ref: ID# 935343

Enc. Submitted documents

c: Requestor
(w/o enclosures)