



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2022

Mr. Joe R. Zapata
HPD Administration Manager
City of Houston
1200 Travis, 10th Floor
Houston, Texas 77002-6000

OR2022-09773

Dear Mr. Zapata:

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# 940220 (OR Nos. 20-02354 and 20-05386).

The Houston Police Department (the "department") received four requests from the same requestor for (1) information pertaining to a specified case number and (2) any records pertaining to two named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we understand the department to claim the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-18264 (2018). In that ruling, we determined the department must 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 circumstances have

¹ We note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office with respect to claiming section 552.101 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

changed with respect to any information previously withheld. Accordingly, the department may not rely on Open Records Letter No. 2018-18264 with respect to that information. Further, the remaining information at issue was created after the date the department received the request for information at issue in the prior ruling. Therefore, the remaining information is not the subject of the prior ruling and the department may not withhold it under Open Records Letter No. 2018-18264. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will consider the submitted arguments against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from public 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).³ 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). Upon review, 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

³ Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21.

the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁴

However, we note the requestor is a representative of the Office of the Federal Public Defender for the Western District of Texas (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 [(“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. “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. However, 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 411.087 and 411.1272 of the Government Code give the public

⁴ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

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 the submitted information, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. 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.

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jm

Ref: ID# 940220

Enc. Submitted documents

c: Requestor
(w/o enclosures)