



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 25, 2022

Ms. Danielle Betters  
Public Records Specialist  
City of Mansfield  
1200 East Broad Street  
Mansfield, Texas 76063

OR2022-15040

Dear Ms. Betters:

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# 950228 (ORR# 0347-2022).

The Mansfield Police Department (the "department") received a request for information pertaining to a specified investigation involving named individuals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the department must generally withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* However, section 261.201 provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a).

We note the requestor states she is conducting a court-ordered child custody evaluation of the individuals at issue. Section 107.1111 of the Family Code constitutes “applicable state law” in this instance. Section 107.1111(a) 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;
- (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”). The requestor states she is a child custody evaluator and was appointed by a court to complete an evaluation regarding the named individuals. 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 of the Family Code. Further, although the department also seeks to withhold the information at issue under section 552.108 of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act. *See Open Records Decision Nos. 613 at 4 (1993); see also Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the*

Act). However, if the submitted information does not relate to a person residing in a residence subject to a child custody evaluation, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), 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 id.* § 58.008. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). The submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b). 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. Thus, we must address the conflict between the requestor’s possible right of access under section 107.1111 of the Family Code and the confidentiality provided by section 58.008(b) of the Family 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. Therefore, if the submitted information relates to a person residing in a residence subject to the child custody evaluation, then the department must release the submitted information pursuant to section 107.1111(a) of the Family Code.

In summary, if the submitted information does not relate to a person residing in a residence subject to a child custody evaluation, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the submitted information relates to a person residing in a residence subject to the child custody evaluation, then the department must release the submitted information pursuant to section 107.1111(a) 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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/jxd

Ref: ID# 950228

Enc. Submitted documents

c: Requestor  
(w/o enclosures)