



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2022

Mr. Jeremy Anato-Mensah
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-15640

Dear Mr. Anato-Mensah:

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# 951292 (Ref. No. E001822-030822).

The Fort Worth Police Department (the "department") received a request for a specified report involving a named individual. 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. 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” and “conduct indicating 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. 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). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the submitted information is generally confidential under section 58.008(b) of the Family Code.

However, the requestor is a representative of the Adult Protective Services (“APS”) division of the Texas Department of Family and Protective Services (“DFPS”). Under chapter 48 of the Human Resources Code, the duties of DFPS include investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See Hum. Res. Code* §§ 48.151, .152. Section 48.154(a) of the Human Resources Code provides, as follows:

[DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly person or person with a disability. A person, agency, or institution that has a record or document that [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to [DFPS] or state agency that requested the record or document.

Id. § 48.154(a). The request for information reflects the requestor seeks the submitted information for purposes of an APS investigation. Consequently, we understand DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code, which include investigation of abuse, neglect, or exploitation of an elderly person or person with a disability. *See id.* §§ 48.151, .152. Thus, because the requestor is seeking information needed to perform the duties of DFPS under chapter 48, the requestor has a right of access to the submitted information under section 48.154 of the Human Resources Code. Therefore, we must address the conflict between confidentiality under section 58.008(b) of the Family Code and access under section 48.154 of the Human Resources Code.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See Gov’t Code* § 311.026(b); *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 48.154 gives one specific requestor, DFPS, access to particular information relating to an investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See* Hum. Res. Code § 48.154(a). Conversely, section 58.008(b) generally makes juvenile law enforcement records confidential. *See* Fam. Code § 58.008. Thus, we conclude the statutory right of access granted to DFPS by section 48.154 of the Human Resources Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code.

You also assert the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Section 552.101 also encompasses information protected by section 261.201, which provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

Id. § 261.201(a). You assert the submitted information was used or developed in an investigation by the department of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Upon review, we agree the submitted information is within the scope of section 261.201(a). Thus, the submitted information is generally confidential under section of the Family Code. However, section 261.201(a) provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We note chapter 48 of the Human Resources Code constitutes “applicable state law” in this instance.

As stated above, the requestor is with the APS division of DFPS, which needs the submitted information to perform its duties under chapter 48 of the Human Resources Code. *See* Hum. Res. Code §§ 48.151, .152, .154(a). Thus, the requestor generally has a right of access to the information pursuant to section 48.154. However, as noted above, section 261.201(a) of the Family Code states any release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office cannot determine whether the release of the submitted information is consistent with the Family Code. Therefore, if the department determines release of the submitted information is not consistent with the Family Code, then the department must 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* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Fam. Code § 261.201 (b)-(g), (k) (listing entities authorized to receive information under section 261.201 of the Family Code). However, if the department determines the release of the submitted information is consistent with the Family Code, then the department must release the submitted information to the requestor pursuant to section 48.154 of the Human Resources Code.

If the department determines the release of the submitted information is consistent with the Family Code, then we note the submitted information includes motor vehicle record information subject to section 552.130 of the Government Code.¹ Section 552.130 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. Accordingly, if the department determines the release of the submitted information is consistent with the Family Code, then the department must generally withhold the driver's license number and state of issuance in the submitted information under section 552.130. However, as noted above, section 48.154 of the Human Resources Code provides the requestor with a right of access to the submitted information. As previously noted, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4. We conclude, however, because section 552.130 of the Government Code has its own access provision, this section is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 48.154 and the confidentiality provided under section 552.130. Although section 48.154 generally provides DFPS representatives with access to any information necessary to perform their duties under chapter 48 of the Human Resources Code, section 552.130 of the Government Code is specifically applicable only to motor vehicle record information. Thus, we find section 552.130 of the Government Code is more specific than the general right of access under section 48.154. Moreover, the statutory predecessor to section 48.154, section 48.0835 of the Human Resources Code, was enacted prior to section 552.130 of the Government Code. *See* Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting Gov't Code § 552.130); Act of May 24, 1993, 73d Leg., R.S., ch. 651, § 1, 1993 Tex. Gen. Laws 2436 (enacting Hum. Res. Code § 48.0835). Therefore, if the department determines the release of the submitted information is consistent with the Family Code, then notwithstanding the provisions of section 48.154, the department must withhold the driver's license number and state of issuance under section 552.130.

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, if the department determines release of the submitted information is not consistent with the Family Code, then the department must 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. If the department determines the release of the submitted information is consistent with the Family Code, then the department must withhold the driver's license number and state of issuance under section 552.130 of the Government Code and release the remaining information to the requestor pursuant to section 48.154 of the Human Resources Code.²

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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 951292

c: Requestor

² Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.