



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 20, 2023

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

OR2022-33859A

Dear Mr. Zapata:

Our office issued Open Records Letter No. 2022-33859 (2022) on November 1, 2022. Since that date, we have determined an error was made in the issuance of this ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on November 1, 2022. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Your request was assigned ID# 981394 (Reference No. P034230-081022).

The Houston Police Department (the "department") received a request for information pertaining to a specified incident. 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 information made confidential by other statutes, such as 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 section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the submitted information is confidential under section 261.201 of the Family Code, and the department must generally withhold it under section 552.101 of the Government Code on this basis. However, this information is also subject to section 58.008 of the Family Code. Therefore, we will address the applicability of section 58.008 to the information at issue.

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

(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 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.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

...

(5) the chief executive officer or the officer's designee of a primary or secondary school where the child is enrolled only for the purpose of conducting a threat assessment or preparing a safety plan related to the child.

Id. § 58.008(b), (d)(5); *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 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). Upon review, we find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b).

However, the requestor is the chief executive officer for the Emery/Weiner School, a secondary school. Section 58.008(d)(5) of the Family Code gives the chief executive officer or the officer's designee of a primary or secondary school where the child is enrolled a right of access to juvenile law enforcement records, but only for the purpose of conducting a threat assessment or preparing a safety plan related to the child. *See id.* § 58.008(d)(5); *see also* § 58.005(d-1)(3) (the term “chief executive officer” includes the chief executive officer of a private school). The requestor states he is evaluating any potential safety concerns presented by the child offender at issue. Thus, we understand the requestor intends to conduct a threat assessment or prepare a safety plan related to the child offender at issue. Therefore, the requestor generally has a right of access under section 58.008(d)(5) to the submitted information, and it may not be withheld from him under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. We also note a statutory right of access generally prevails over the common law as well as the Act's general exceptions to disclosure, including section 552.108 of the Government Code. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Accordingly, the department may not withhold the submitted information from this requestor under section 552.101 in conjunction with common-law privacy or under section 552.108 of the Government Code.

Further, as discussed above, the information is also subject to section 261.201(a) of the Family Code, and records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). Section 58.008(d)(5) is applicable state law allowing disclosure to the requestor. We find the requestor intends to use the submitted information for purposes consistent with the Family Code. Accordingly, the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.130 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.¹ See Gov't Code § 552.130. Upon review, we find some of the submitted information, which we marked, consists of motor vehicle record information subject to section 552.130. Therefore, the department must generally withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

As previously noted, the requestor has a statutory right of access to the submitted information under section 58.008(d)(5) of the Family Code. A specific statutory right of access prevails over general exceptions to disclosure under the Act. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 58.008(d)(5) and the confidentiality provided under section 552.130. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. See *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar*, 521 S.W.2d 277. In this instance, section 58.008(d)(5) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than, and prevails over, the general right of access provided by section 58.008(d)(5). Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor pursuant to section 58.008(d)(5) of the Family 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

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).

² We note, in this instance, the requestor has a right of access to the information being released. See Fam. Code 58.008(d)(5). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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/eb

Ref: ID# 981394

c: Requestor
(w/o enclosures)