



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 26, 2009

Mr. J. Landon K. Schmidt
Assistant Criminal District Attorney
Kaufman County District Attorney's Office
100 W. Mulberry Street
Kaufman, Texas 75142

OR2009-08852

Dear Mr. Schmidt:

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# 347293.

The Kaufman County District Attorney's Office (the "district attorney") received a request for records pertaining to a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.147, and 552.148 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 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from 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 Subchapter B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Fam. Code § 58.007(c), (e). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007, a "child" is person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. Under section 58.007(e), a child's parent or guardian has a right to inspect or copy law enforcement records concerning their own child. *See id.* § 58.007(e). We note that the right of access under section 58.007(e) does not apply to the parent of a juvenile involved only as a complainant, victim, witness, or other involved party; rather, the individual must be the parent of a juvenile suspect, offender, or defendant. In this instance, the requestor is the parent of a juvenile victim and, thus, does not possess a right of access to the submitted information under section 58.007(e). Therefore, the submitted information is generally confidential under section 58.007(c) of the Family Code.

We note, however, that the submitted information contains records created or maintained by a mental health professional that pertain to the requestor's child, which are governed under chapter 611 of the Health and Safety Code. Section 611.002(a) provides as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Mental health records are confidential under section 611.002. However, it appears that the requestor may have a right of access to some of the submitted mental health records in this instance. Sections 611.004 and 611.0045 provide for access to mental health records by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient’s behalf, or a person who has the written consent of the patient. Health & Safety Code § 611.004, .0045 (professional may disclose confidential information to person who has patient’s written consent or to parent of minor patient). We have marked the submitted information that is subject to section 611.002 of the Health and Safety Code and may only be released in accordance with sections 611.004 and 611.0045.

Thus, although the submitted information is generally confidential under section 58.007 of the Family Code, sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to the mental health records pertaining to his child. Therefore, there is a conflict between the provisions of section 58.007 of the Family Code and sections 611.004 and 611.0045 of the Health and Safety Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov’t Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). In this instance, although section 58.007 of the Government Code generally makes juvenile law enforcement records confidential, sections 611.004 and 611.0045 of the Health and Safety Code specifically permit release of mental health records to certain parties and in certain circumstances. Accordingly, sections 611.004 and 611.0045 of the Health and Safety Code prevails over section 58.007 of the Government Code. Thus, the district attorney must withhold the mental health records we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor has a right of access to those records under sections 611.004 and 611.0045 of the Health and Safety Code. The district attorney must withhold the rest of the submitted information in conjunction with section 58.007 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 http://www.oag.state.tx.us/open/index_orl.php,

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 347293

Enc. Submitted documents

c: Requestor
(w/o enclosures)