



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2012

Chief James Kelley
Sweetwater Police Department
P.O. Box 450
Sweetwater, Texas 79556

OR2012-01414

Dear Chief Kelley:

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# 445139.

The Sweetwater Police Department (the "department") received a request from an investigator with the Texas Education Agency (the "TEA") for all offense, incident, and investigative reports regarding a named individual, including witness statements and confessions. You claim the submitted information is excepted from disclosure under section 552.108 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."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 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:

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

- (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 Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Juvenile law enforcement records relating to juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a) (defining delinquent conduct), (b)(1)(A) (defining conduct indicating a need for supervision to include misdemeanor punishable by fine only). Case number 11-01588 relates to conduct by several fifteen- and sixteen-year-olds that indicates a need for supervision. Case number 11-01467 relates to delinquent conduct by a sixteen-year-old. It does not appear any of the exceptions in section 58.007 apply to case number 11-01588 or 11-01467. Therefore, we find case numbers 11-01588 and 11-01467 are generally confidential under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

You raise section 552.108 as an exception to disclosure of the remaining information, case number 11-01115. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case number 11-01115 relates to an active case pending at the municipal court. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the

²As our ruling with regard to this information is dispositive, we do not address your remaining argument against its disclosure.

information held to be public in *Houston Chronicle*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, case number 11-01115 is subject to section 552.108(a)(1) of the Government Code.

The requestor claims section 22.082 of the Education Code gives the TEA a right of access to the requested information. Section 22.082 of the Education Code provides the TEA “may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 [of the Education Code].” Educ. Code § 22.082. The requestor states the requested information is related to an investigation of an individual who has applied for or currently holds educator credentials. In this instance, you state the submitted information pertains to active criminal cases. Therefore, we find the TEA may not obtain all offense, incident, and investigative reports regarding the named individual under section 22.082 of the Education Code.

However, section 22.082 provides the TEA with a right of access to all criminal history record information (“CHRI”). *See id.* CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). The department is a criminal justice agency; accordingly, we conclude CHRI regarding the named individual included in the submitted department reports is subject to the right of access under section 22.082 of the Education Code.

As discussed above, case number 11-01588 is generally confidential under section 58.007(c) of the Family Code. However, case number 11-01588 also contains CHRI regarding the named individual. Thus, this situation presents a conflict between section 58.007(c) of the Family Code and section 22.082 of the Education Code. When information falls within both a general and a specific statutory provision, the specific provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See id.* § 311.026; *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. 583 (1990), 451 (1986). We consider section 22.082 of the Education Code to be more specific than the general confidentiality provision of section 58.007(c) of the Family Code. Under section 22.082, the legislature intended for the TEA to have access to “all [CHRI]...that relate[s] to an applicant for or holder of a certificate[.]” Educ. Code § 22.082. We do not believe the legislature intended for the TEA’s access to be limited by section 58.007(c), which is a confidentiality statute with broad applicability to members of the public regarding records of juvenile offenders. Therefore, any CHRI to which the requestor is otherwise entitled under section 22.082 of the Education Code may not be withheld under section 552.101 of the Government Code on the basis of section 58.007(c) of the Family Code.

In summary, the department must release CHRI of the named individual contained in the submitted information pursuant to section 22.082 of the Education Code. The department must withhold the remaining information in case numbers 11-01588 and 11-01467 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department may withhold the remaining information in case number 11-01115 under section 552.108(a)(1) of the Government Code but must release basic information.³

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, toll free at (888) 672-6787.

Sincerely,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 445139

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the requestor has a right of access to some of the information being released, the department should again request a ruling from this office if it receives another request for the same information from a different requestor. See Gov't Code §§ 552.301(a), .302.