



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2013

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2013-05297

Dear Ms. Pemberton:

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# 482952 (Killeen ID #W009807).

The Killeen Police Department (the "department") received a request for any records pertaining to a named individual, including information pertaining to a specified incident. 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. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part 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 Subchapters 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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). 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 at the time of the conduct. *See id.* § 51.02(2). The information at issue involves a child engaged in delinquent conduct that occurred after September 1, 1997. As such, this information constitutes a juvenile law enforcement record that is generally confidential pursuant to section 58.007(c).

We note the requestor is an investigative specialist for the Tennessee Department of Human Services ("TDHS"). Section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code" a right of access to juvenile law enforcement records. *Id.* § 58.007(e). Section 411.082 of the Government Code defines a "criminal justice agency" as including "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." Gov't Code § 411.082(3)(A). If the department determines TDHS is not a criminal justice agency, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the department determines TDHS is a criminal justice agency as defined by section 411.082, then the requestor has a right of access to the submitted information under section 58.007(e), and it may not be withheld from this requestor under section 552.101 in conjunction with section 58.007(c).

In the event the requestor has a right of access to the submitted information under section 58.007(e), we note the submitted information includes information that is subject to

section 552.130 of the Government Code.¹ Section 552.130(a)(1) provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the information we have marked is generally excepted from disclosure under section 552.130(a)(1).

However, as previously noted, the requestor may have a statutory right to inspect the submitted information pursuant to section 58.007(e) of the Family Code. Therefore, we must address the conflict between the access provided under section 58.007(e) and the confidentiality provided under section 552.130 of the Government Code. 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 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). In this instance, section 58.007(e) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. Although a specific statutory right of access prevails over general exceptions to disclosure under the Act, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 58.007(e). Accordingly, notwithstanding the provisions of section 58.007(e), if the department determines TDHS is a criminal justice agency as defined by section 411.082, the department must withhold the marked motor vehicle record information under section 552.130 and must release the remaining information to this requestor.

In summary, if the department determines TDHS is not a criminal justice agency as defined by section 411.082 of the Government Code, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department determines TDHS is a criminal justice agency, the department must withhold the information we have marked under section 552.130 of the Government Code and must release the remaining information.

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

¹The 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).

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 482952

Enc. Submitted documents

c: Requestor
(w/o enclosures)