



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2013

Ms. Raethella Jones
Assistant District Attorney
Brazoria County District Attorney's Office
111 East Locust Street
Angleton, Texas 77515

OR2013-05342

Dear Ms. Jones:

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# 485547.

The Brazoria County Juvenile Justice Department (the "department") received a request for all records related to 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007 provides, in relevant part:

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under [Title 3 of the Family Code] are open to inspection only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney for a party to the proceeding;

(4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

...

(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.

...

(i) In addition to the authority to release information under Subsection (b)(5), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

Fam. Code § 58.007(b), (e), (i). You state the submitted information consists of records maintained by the department concerning a juvenile offender. You inform us the submitted information relates to a juvenile who was a party to proceedings under the Juvenile Justice Code, Title 3 of the Family Code. You state that although the requestor is an attorney for the juvenile, he represents her on a separate matter that is not a proceeding under the Juvenile Justice Code. Therefore, based on your representations and our review of the submitted information, we find the requestor is not one of the persons or entities authorized to access this information under section 58.007(b). As a representative of the juvenile at issue, the requestor also asserts he has a right of access to the submitted information pursuant to section 58.007(e) of the Family Code. We note, however, section 58.007(b) applies to juvenile offender records maintained by a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney and has its own access provisions. Therefore, access to law enforcement records under section 58.007(e) does not apply to

records maintained under section 58.007(b). Additionally, we note that as a juvenile probation department, the department has the discretion to release the requested information pursuant to guidelines adopted by the juvenile board. *See id.* § 58.007(i). You inform us the juvenile board has not adopted a rule governing the release of this type of information. Therefore, based on our review of the submitted information, the department generally must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.

You note, however, the submitted information contains the juvenile's fingerprints. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides in part that "[i]n this chapter . . . '[b]iometric identifier' means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Thus, section 560.002(1)(A) of the Government Code gives an individual or her authorized representative a right of access to her own fingerprint information. You also note the requestor is the authorized representative of the juvenile. Accordingly, we agree the requestor has a special right of access to the juvenile's fingerprints pursuant to section 560.002 of the Government Code.

Thus, although the submitted information is generally confidential under section 58.007(b) of the Family Code, section 560.002 of the Government Code provides the requestor with a right of access to the juvenile's fingerprints. Therefore, there is a conflict of laws between section 58.007(b) of the Family Code and section 560.002 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See id.* § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision); *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, because sections 560.002 and 560.003 of the Government Code specifically govern access to biometric identifiers, these provisions are more specific than the general confidentiality section 58.007(b) of the Family Code provides for juvenile probation records. Thus, the statutory right of access granted by section 560.002 of the Government Code prevails over the more general confidentiality provision of section 58.007(b) of the Family Code. Therefore, the juvenile's fingerprints must be released to this requestor under section 560.002 of the Government Code. The department must

withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.¹

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tch

Ref: ID# 485547

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.