



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2013

Ms. Teresa J. Brown  
Senior Open Records Assistant  
City of Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2013-09995

Dear Ms. Brown:

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# 490551 (Tracking # TIMD032513).

The Plano Police Department (the "department") received a request for four reports pertaining to the requestor. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 protected by 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. The relevant language of section 58.007 reads:

(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.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

Fam. Code § 58.007(c), (e), (j). 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 reported conduct. *See id.* § 51.02(2). Upon review, we agree the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" for purposes of Fam. Code § 58.007). Thus, this information is subject to section 58.007. It does not appear any of the exceptions in section 58.007 apply to the information in Exhibit C. Therefore, the department must generally withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, the requestor is a juvenile suspect listed in the report in Exhibit B, and is now an adult. Therefore, the requestor may inspect or copy any law enforcement records concerning himself under section 58.007(e). *Id.* § 58.007(e). Accordingly, Exhibit B may not be withheld from this requestor on the basis of section 58.007(c). However,

section 58.007(j)(1) provides any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See id.* § 58.007(j)(1). Therefore, the department must withhold the personally identifiable information concerning the other juvenile suspects and witnesses, which you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. Further, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Accordingly, we will address the applicability of section 552.130 of the Government Code to the information in Exhibit B.

We note Exhibit C contains the requestor'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). Sections 560.001, 560.002, and 560.003 are intended to protect the privacy of a living individual to whom a fingerprint or other biometric identifier pertains. Thus, section 560.002(1)(A) of the Government Code gives an individual or his authorized representative a right of access to his own fingerprint information.

Generally, juvenile law enforcement records are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. However, because this requestor has a special right of access to his own fingerprints, which we have marked, we find there is a conflict of laws between section 58.007(c) 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 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. 598 (1991), 583 (1990), 451 (1986). In this instance, sections 560.002 and 560.003 of the Government Code are more specific than the general confidentiality provision in section 58.007(c) of the Family Code. Thus, the statutory right of access granted by section 560.002 prevails over the more general confidentiality provisions of section 58.007. *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is specific, then the specific controls); *see also* Gov't Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision). Therefore, the requestor's fingerprints must be released to him under section 560.002 of the Government Code.

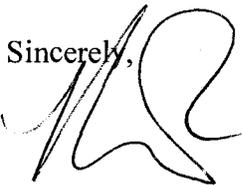
Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. *See Gov't Code* § 552.130(a)(1)-(2). Upon review, we find the department must withhold the information you have marked, and the additional information we have marked, in Exhibit B under section 552.130 of the Government Code.

In summary, the department must release the requestor's fingerprints, which we have marked, under section 560.002 of the Government Code. The department must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The department must withhold the personally identifiable information concerning the other juvenile suspects and witnesses, which you have marked, and the additional information we have marked, in Exhibit B under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The department must withhold the information you have marked, and the additional information we have marked, in Exhibit B under section 552.130 of the Government Code. The department must release the remaining information in Exhibit B.<sup>1</sup>

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We note the information being released in this instance includes information that is confidential with respect to the general public. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 490551

Enc. Submitted documents

c: Requestor  
(w/o enclosures)