



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2014

Ms. Rachel L. Lindsay  
Counsel for the McKinney Police Department  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2014-01822

Dear Ms. Lindsay:

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# 512590 (ORR# 10-8814).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to a named individual, including specified arrests. You state the department has released some information to the requestor. 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 note you have submitted a court order of restricted access pertaining to some of the requested information. You indicate the order was entered in accordance with section 58.023 of the Family Code, which states the Texas Department of Public Safety shall certify that juvenile law enforcement records are subject to automatic restriction under certain circumstances. Fam. Code § 58.203. Section 58.204(b) provides:

(b) On certification of records in a case under Section 58.203, the [Texas Department of Public Safety] may permit access to the information in the juvenile justice information system relating to the case of an individual only:

- (1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; or
- (2) for research purposes, by the Texas Juvenile Probation Commission, the Texas Youth Commission, or the Criminal Justice Policy Council.

*Id.* § 58.204(b). Furthermore, section 58.207 of the Family Code provides in relevant part:

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

...

(E) records maintained by a law enforcement agency[.]

...

(b) Except as provided by Subsection (c), on receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

*Id.* § 58.207(a)(1)(E), (b). In this instance, the requestor is a representative of the U.S. Probation Office for the United States District Court for the Eastern District of Texas (the “probation office”). She states the requested information involves an individual who is under investigation by the probation office. As noted above, section 58.204(b) provides access to “a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code[.]” *Id.* § 58.204(b). 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” and “a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation.” Gov’t Code § 411.082(3)(A)-(B).

We understand the probation office is a criminal justice agency. *See id.* § 411.082(3)(A). (defining “criminal justice agency” as “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”). However, we are not able to determine whether the requestor seeks access to the requested information for a criminal justice purpose. Accordingly, if the department determines this particular requestor seeks access to the requested information for a criminal justice purpose, then the requestor has a right of access to the information at issue. Otherwise, the requestor has no right of access to this information, and in accordance with the submitted order of restricted

access and section 58.207(b), we find the department must respond to the request by stating that the record at issue does not exist.<sup>1</sup>

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 provides in relevant part:

(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). Subsection 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of subsection 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 find report numbers 99-1054, 99-20280, 00-24918, and 03-019560 pertain to juvenile suspects who were ten years of age or older and under seventeen years of age at the time of

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

the incidents that are the subject of the submitted reports. Further, these reports involve juvenile delinquent conduct that occurred after September 1, 1997. Therefore, we agree this information is generally confidential under subsection 58.007(c) of the Family Code.

However, we note subsection 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. *See* Fam. Code § 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). As previously mentioned, the requestor is a representative of the probation office, and we understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* Therefore, the requestor has a right of access to report numbers 99-1054, 99-20280, 00-24918, and 03-019560 under subsection 58.007(e) of the Family Code, and the department may not withhold this information from the requestor under section 552.101 in conjunction with subsection 58.007(c).

We note, however, report numbers 99-1054, 99-20280, 00-24918, and 03-019560 contain motor vehicle record information that is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the marked motor vehicle record information is generally excepted from disclosure under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right of access to report numbers 99-1054, 99-20280, 00-24918, and 03-019560 pursuant to subsection 58.007(e) of the Family Code. Therefore, we must address the conflict between the right of access provided under subsection 58.007(e) of the Family Code 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, subsection 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

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<sup>2</sup>The 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).

find the confidentiality provided by section 552.130 is more specific than the general right of access provided by subsection 58.007(e). Accordingly, the department must withhold the marked motor vehicle record information in report numbers 99-1054, 99-20280, 00-24918, and 03-019560 under section 552.130 of the Government Code and release the remaining information in these reports pursuant to subsection 58.007(e) of the Family Code.

In summary, if the department determines the requestor seeks access to the requested information for a criminal justice purpose, then the requestor has a right of access to the information at issue. Otherwise, the requestor has no right of access to this information, and in accordance with the submitted order of restricted access and section 58.207(b), we find the department must respond to the request by stating that the record at issue does not exist. The department must withhold the marked motor vehicle record information in report numbers 99-1054, 99-20280, 00-24918, and 03-019560 under section 552.130 of the Government Code and release the remaining information in these reports pursuant to subsection 58.007(e) of the Family Code.<sup>3</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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

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<sup>3</sup>We note the requestor in this case has a right of access to information that would otherwise be confidential with respect to the general public. See Fam Code § 58.007(e). Thus, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 512590

Enc. Submitted documents

c: Requestor  
(w/o enclosures)