



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 16, 2015

Ms. Sarah R. Martin  
Assistant City Attorney  
City of Arlington  
Arlington Police Department  
Legal Division  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR2015-21735

Dear Ms. Martin:

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# 584599 (Ref. No. 22944).

The Arlington Police Department (the "department") received a request for a specified incident report involving a named individual. The department claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 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. *See* Fam. Code § 58.007(c). Section 58.007(c) provides the following:

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.

*Id.* Upon review, we find the submitted information involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.02(2) (for purposes of section 58.007(c), “child” means person who is ten years of age or older and under seventeen years of age when conduct occurred); Act of June 1, 2015, 84th Leg., R.S., ch. 935, § 18, 2015 Tex. Sess. Law Serv. 3224, 3233-34 (to be codified as amendments to Fam. Code § 51.03); Act of May 31, 2015, 84th Leg., R.S., ch. 944, § 4, 2015 Tex. Sess. Law Serv. 3268, 3269-70 (to be codified as an amendment to Fam. Code § 51.03(b)); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 3, 2015 Tex. Sess. Law Serv. 4310, 4311 (to be codified as an amendment to Fam. Code § 51.03(b)) (defining “delinquent conduct” and “conduct indicating a need for supervision”). The exceptions in section 58.007 do not appear to apply. Therefore, the submitted information is generally confidential under section 58.007(c) of the Family Code.

However, the requestor is an enforcement technician with the Texas State Board of Pharmacy Police Department (the “board”). Section 411.122(a) of the Government Code provides, in part, as follows:

[A]n agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.

Gov’t Code § 411.122(a). The board is specifically subject to section 411.122 of the Government Code. *See id.* § 411.122(d)(14). In addition, section 411.087(a) of the Government Code provides, in pertinent part, the following:

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [Department of Public Safety] criminal history record information maintained

by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337-38 (to be codified as an amendment to Gov't Code §411.087(a)(2)). Criminal history record information is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See* Gov't Code § 411.082(2). Thus, under sections 411.122 and 411.087, the requestor may have a right of access to any criminal history record information about the named individual contained in the department's records. The submitted information contains criminal history record information about this individual. Therefore, if the named individual is an applicant for a license from the board, is the holder of a license from the agency, or requested a determination of eligibility for a license from the board, then the requestor is authorized to obtain the submitted criminal history record information pursuant to sections 411.087(a)(2) and 411.122 of the Government Code. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337-38 (to be codified as an amendment to Gov't Code §411.087(a)(2)); Gov't Code § 411.122(a). Accordingly, we must address the conflict between the confidentiality provided by section 58.007(c) of the Family Code and the requestor's possible right of access to the submitted criminal history record information under sections 411.087(a)(2) and 411.122 of the Government Code.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *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). Although section 58.007(c) generally makes juvenile law enforcement records confidential, section 411.122 of the Government Code, in concert with section 411.087(a)(2) of the Government Code, gives the board access to particular information, criminal history record information, found in records involving an individual who is an applicant for a license from the board, is the holder of a license from the agency, or requests a determination of eligibility for a license from the board. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337-38 (to be codified as an amendment to Gov't Code §411.087(a)(2)); Gov't Code § 411.122(a)(1), (d)(14); Fam. Code § 58.007. Thus, the

statutory right of access granted to the board by sections 411.087(a)(2) and 411.122 of the Government Code prevails over the more general confidentiality provisions of section 58.007(c) of the Family Code. Therefore, if the named individual is an applicant for a license from the board, is the holder of a license from the board, or requested a determination of eligibility for a license from the board, then the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to sections 411.087(a)(2) and 411.122 of the Government Code, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the named individual is not an applicant for a license from the board, is the holder of a license from the agency, or requests a determination of eligibility for a license from the board, 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.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 584599

Enc. Submitted documents

c: Requestor  
(w/o enclosures)