



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 8, 2016

Ms. Michelle Buendia  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2016-07922

Dear Ms. Buendia:

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# 604905 (ORR No. 2016-01182).

The Dallas Police Department (the "department") received a request for information pertaining to two named individuals, including a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> 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 section 58.007 of the Family Code, which provides, in 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:

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with section 552.130 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision No. 676 at 1-2 (2002).

(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.

Fam. Code § 58.007(c); *see id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.007(c). It does not appear that any of the exceptions in section 58.007 apply; therefore, the submitted information is generally confidential under section 58.007(c) of the Family Code.

In this instance, however, the requestor is a representative of the Adult Protective Services division of the Texas Department of Family and Protective Services (“DFPS”). Under chapter 48 of the Human Resources Code, the duties of DFPS include investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.151, .152. Section 48.154 of the Human Resources Code provides, in part:

(a) The [DFPS] or state another agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the [DFPS]’s or state agency’s duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly person or person with a disability. A person, agency, or institution that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or agency that requested the record or document.

*Id.* § 48.154(a). The request for information reflects the requestor seeks the submitted information for purposes of an Adult Protective Services investigation. Consequently, we understand that DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code, which include investigation of abuse, neglect, or exploitation of a disabled person. *See id.* §§ 48.151, .152. Thus, because the requestor is seeking information needed to perform the duties of DFPS under chapter 48, the requestor has a right of access to the submitted information under section 48.154 of the Human

Resources Code. Therefore, there is a conflict between the provisions of section 58.007(c) of the Family Code and section 48.154 of the Human Resources Code. Where information falls within both general and specific statutory provisions, the specific provision prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *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). Section 48.154 gives one specific requestor, DFPS, access to particular information relating to an investigation of abuse, neglect, or exploitation of an elderly or disabled person. *See* Hum. Res. Code § 48.154(a). Conversely, section 58.007(c) prohibits any member of the public from obtaining any and all law enforcement records of any incident in which a juvenile is engaged in delinquent conduct or conduct indicating a need for supervision occurring on or after September 1, 1997. *See* Fam. Code § 58.007. Accordingly, with regard to the conflict between section 58.007(c) and section 48.154, we find section 48.154 is the more specific statute in this instance. Additionally, we note section 48.154 is the later enacted statute.<sup>2</sup> Thus, we conclude section 48.154 is an exception to the confidentiality of section 58.007(c) for the information it covers. Accordingly, section 48.154 prevails over section 58.007(c).

The department also raises common-law privacy for the submitted information. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. As noted above, the requestor has a right of access to the submitted information pursuant to section 48.154 of the Human Resources Code. We note a statutory right of access prevails over a claim under common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, the department may not withhold any of the submitted information from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal

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<sup>2</sup>The predecessor to section 48.154, section 48.0385 of the Human Resources Code, was enacted after section 51.14 of the Family Code, the predecessor to section 58.007. Act of May 24, 1993, 73d Leg., R.S., ch. 651, § 1, 1993 Tex. Gen. Laws 2436 (Vernon) (codified as section 48.0835 of the Human Resources Code).

identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Accordingly, the motor vehicle record information you have marked is confidential under section 552.130 of the Government Code.

However, as noted above, section 48.154 of the Human Resources Code provides the requestor with a right of access to the submitted information. A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986). We conclude, however, because section 552.130 of the Government Code has its own access provision, this section is not a general exception under the Act. *See* Gov't Code § 552.130(b); *see also* Attorney General Opinions GA-0055 at 3-4 (2003) (where statute specifically authorizes release of information under certain circumstances or to particular entities, that information may only be released or transferred in accordance therewith), DM-353 at 4-5 n.6 (1995) (detailed provisions in state law for disclosure of records would not permit disclosure "to other governmental entities and officials . . . without violating the record's confidentiality"), JM-590 at 5 (1986) ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others"). Therefore, we must address the conflict between the access provided under section 48.154 and the confidentiality provided under section 552.130 of the Government Code. As previously noted, where information falls within both general and specific statutory provisions, the specific provision prevails over the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar*, 521 S.W.2d 277; Open Records Decision No. 583 at 2 (1990) (specific statute stands as an exception or qualification to the more general).

Although section 48.154 generally provides DFPS representatives with access to any information necessary to perform their duties under chapter 48 of the Human Resources Code, section 552.130 of the Government Code is specifically applicable only to motor vehicle record information. Thus, we find section 552.130 of the Government Code is more specific than the general right of access under section 48.154. Additionally, we note section 552.130 is the later enacted statute.<sup>3</sup> Therefore, notwithstanding the provisions of section 48.154 of the Human Resources Code, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

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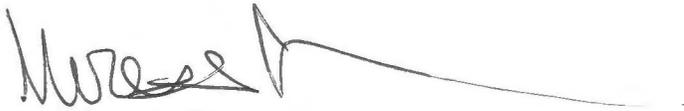
<sup>3</sup>Section 552.130 of the Government Code was enacted after the predecessor to section 48.154, section 48.0385 of the Human Resources Code. *See* Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting Gov't Code § 552.130); Act of May 24, 1993, 73d Leg., R.S., ch. 651, § 1, 1993 Tex. Gen. Laws 2436 (enacting Hum. Res. Code § 48.0835).

In summary, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor pursuant to section 48.154 of the Human Resources Code.<sup>4</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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/bw

Ref: ID# 604905

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>Because the requestor has a special right of access under section 48.154 of the Human Resources Code, the department must request another ruling if it receives a request for this same information from another requestor. See Gov't Code §§ 552.301, .302.