



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 6, 2016

Mr. M. Matthew Ribitzki  
Deputy City Attorney  
City of Burleson  
141 West Renfro  
Burleson, Texas 76028

OR2016-20030

Dear Mr. Ribitzki:

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# 625271 (Burleson ORR No. 952/16-0393).

The City of Burleson (the "city") received a request for a specified police report. 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.

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 other statutes, such as section 58.007 of the Family Code, which provides in pertinent part as follows:

(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). 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), .03(a)-(b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Although the requestor is a recruiter for the United States Army (the "Army") and the named individual has provided the Army with a signed authorization for the release of his information, the named individual is not a child offender, so as to implicate the access provided in section 58.007(e) of the Family Code. *See id.* § 58.007(e). Therefore, the information is generally confidential under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note, however, the submitted information contains the named individual'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 his authorized representative a right of access to his own fingerprint information. We note the requestor has provided a signed, written consent for release from the named individual. Accordingly, the requestor has a special right of access to the named individual's fingerprints pursuant to section 560.002 of the Government Code.

Thus, although the submitted information is generally confidential under section 58.007(c) of the Family Code, section 560.002 of the Government Code provides the requestor with a right of access to the named individual's fingerprints. Therefore, 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 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(c) of the Family Code provides for juvenile law enforcement 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(c) of the Family Code. Therefore, the named individual's fingerprints, which we have marked, must be released to this requestor under section 560.002 of the Government Code. However, the city must generally withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Additionally, as noted above, the requestor is a representative of the United States Army (the "Army"). The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking acceptance or retention in the armed services. *See* 5 U.S.C. § 9101(b)(1)(C); *see also id.* § 9101(a)(6)(A) (DoD is covered agency for purposes of section 9101). The Army has a right to the criminal history record information of state and local criminal justice agencies when the named individual has provided the Army with consent for the release of the criminal history record information. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(6) (DoD includes Department of the Army). Criminal history record information is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release" but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2).

Federal law provides the Army's right of access to criminal history record information preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). Thus, the Army's right of access under federal law preempts section 58.007(c), the state confidentiality provision you claim. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm'n v. FCC*, 476

U.S. 355, 369 (1986) (federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Army's right of access is contingent on the request being made for eligibility or retention purposes, and on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c).

The requestor indicates the request for information was made for enlistment eligibility purposes, and the individual under investigation has provided the Army with a signed authorization for the release of the information at issue. Accordingly, the city must release the criminal history record information of the named individual from the submitted information pursuant to section 9101(b)(1), 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.

To conclude, the city must release the named individual's fingerprints, which we have marked, to this requestor pursuant to section 560.002 of the Government Code. With the exception of the criminal history record information of the named individual, which must be released pursuant to section 9101(b)(1), the city must withhold the remaining information 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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMB/eb

Ref: ID# 625271

Enc. Submitted documents

c: Requestor  
(w/o enclosures)