



October 3, 2001

Ms. Karen H. Brophy
Attorney for the Town of Flower Mound
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201-4335

OR2001-4438

Dear Ms. Brophy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152742.

The Town of Flower Mound (the "town"), which you represent, received two requests for a specified juvenile's blood sample results. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have considered your exceptions and reviewed the submitted information.

Initially, we note that section 724.018 of the Transportation Code provides as follows: "On the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual pursuant to section 552.108, the law-enforcement exception. *See* Open Records Decision Nos. 623 (1994), 613 (1993). The town, however, also asserts that the specimen analysis is excepted under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

¹We note that the town only timely asserts section 552.103 with regard to the second request for information. *See* Gov't Code § 552.301(b) (providing that governmental body must state exceptions that apply not later than the tenth business day).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007 reads 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 Subchapter B.

Fam. Code § 58.007(c). The submitted information involves juvenile conduct that occurred after September 1, 1997.

However, the withholding of information under section 58.007 of the Government Code conflicts with the express language in section 724.018 of the Transportation Code providing for release of the specimen analysis to the person or the person's attorney. Because we are unable to harmonize the two statutes, we must look to the provisions dealing with conflicting statutes in the Code Construction Act. Gov't Code § 311.001. When reviewing conflicting statutes, the Code Construction Act provides that special or local provisions prevail over general provisions unless the general provision was enacted later than the special or local provision and the manifest intent is that the general provision prevail. Gov't Code § 311.026(b); *see also City of Dallas v. Mitchell* 870 S.W.2d 21, 22 (Tex. 1994). Because section 724.018 of the Transportation Code specifically applies to specimen analyses and there is no manifest intent that section 58.007 prevail, we conclude that section 724.018 of the Transportation Code prevails over section 58.007 of the Family Code under the provisions of the Code Construction Act. Therefore, you must release the specimen analysis to the requestor who is the attorney of the person providing the specimen.

The second requestor, however, is not the person who provided the specimen or the attorney and, therefore, the town is not required to release the specimen to this requestor under section 724.018 of the Transportation Code. Thus, there is no statutory conflict with regard to the second requestor. Therefore, we conclude that you must withhold the specimen analysis from the second requestor under section 552.101 in conjunction with section 58.007 of the Family Code.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

²Thus, we need not address the applicability of section 552.103.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 152742

Enc: Submitted documents

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