



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2009

Ms. Josefina J. Brostrom
Assistant County Attorney
El Paso County Courthouse
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-02035

Dear Ms. Brostrom:

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# 335175 (sheriff ID# OP-08-368).

The El Paso County Sheriff's Office (the "sheriff") received a request for all information pertaining to a specified incident involving the requestor's client. You claim that the submitted police report and accompanying information are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The relevant language of section 58.007 of the Family Code 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, D, and E.

Fam. Code § 58.007(c). The submitted police report and accompanying information constitute a law enforcement record relating to a juvenile who engaged in delinquent conduct after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this report. Therefore, the submitted information is generally confidential under section 58.007(c) of the Family Code.

We note, however, that the juvenile law enforcement records contain the requestor’s client’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). Sections 560.001, 560.002, and 560.003 are intended to protect the privacy of a living individual to whom a fingerprint or other biometric identifier pertains. 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.

Generally, juvenile law enforcement records are confidential under section 58.007(c) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. However, because this requestor has a special right of access to his client’s fingerprint information, which we have marked, we find 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 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). In this instance, sections 560.002 and 560.003 of the Government Code are more specific than the general confidentiality provision in section 58.007(c) of the Family Code. Thus, the statutory right of access granted by section 560.002 prevails over the more general confidentiality provisions of section 58.007. *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is

specific, then the specific controls); *see also* Gov't Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision). Furthermore, although you also raise sections 552.103 and 552.108 of the Government Code, this office has found that a statutory right of access overcomes general exceptions to disclosure under the Act. *See* ORD No. 451. Therefore, the requestor's client's fingerprints must be released to this requestor under section 560.002 of the Government Code.¹ The sheriff must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 335175

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because this requestor has a special right of access to information being released, in the event the sheriff receives another request for this information from someone without such a right of access, the sheriff must again ask this office for a ruling.

²As our ruling is dispositive, we need not address your argument under section 552.130 of the Government Code.