



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2010

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 West Belknap, Ninth Floor
Fort Worth, Texas 76196

OR2010-11184

Dear Ms. Fourt:

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# 387960.

The Tarrant County Juvenile Services Department (the "department") received a request for all records pertaining to a named juvenile offender. You claim the submitted records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The department need not release nonresponsive information in response to this request, and this ruling will not address that 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. This section encompasses information that other statutes make confidential, such as section 58.007 of the Family Code, which states in pertinent part:

(b) Except as provided by Article 15.27, Code of Criminal Procedure, the records and files of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under [Title 3 of the Family Code] are open to inspection only by:

- (1) the judge, probation officers, and professional staff or consultants of a juvenile court;
- (2) a juvenile justice agency as that term is defined by Section 58.101;
- (3) an attorney for a party to the proceeding;
- (4) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- (5) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

...

- (i) In addition to the authority to release information under Subsection (b)(5), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

Fam. Code § 58.007(b), (i). The submitted information consists of records maintained by the department concerning a juvenile offender. Upon review, we agree the submitted documents are subject to section 58.007(b) of the Family Code. You state the requestor does not meet the requirements of any of the access provisions enumerated in section 58.007(b). However, as a juvenile probation department, the department has discretion to release the requested information pursuant to guidelines adopted by the juvenile board. *See id.* § 58.007(i). You do not inform us the juvenile board has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, and based on your representations and our review of the submitted information, the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.

We note, however, that the submitted information contains the juvenile'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 her authorized representative a right of access to her own fingerprint information. We note the requestor is the authorized representative of the legal guardian of the juvenile. Accordingly, we conclude the requestor has a special right of access to the juvenile’s fingerprints, which we have marked, pursuant to section 560.002 of the Government Code.

We also note the submitted information contains a record created or maintained by a mental health professional that pertains to the juvenile, which is governed under chapter 611 of the Health and Safety Code. Section 611.002(a) provides as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Mental health records are confidential under section 611.002. However, as the authorized representative of the juvenile’s legal guardian, the requestor may have a right of access to the submitted mental health record. Sections 611.004 and 611.0045 provide for access to mental health records by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient’s behalf, or a person who has the written consent of the patient. Health & Safety Code §§ 611.004, .0045 (professional may disclose confidential information to person who has patient’s written consent or to parent of minor patient). Upon review, we find the information we have marked consists of a mental health record. Therefore, this information may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

Thus, although the submitted information is generally confidential under section 58.007(b) of the Family Code, section 560.002 of the Government Code provides the requestor with a right of access to the juvenile’s fingerprints and sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to the juvenile’s mental health record. Therefore, there is a conflict of laws between section 58.007(b) of the Family Code and section 560.002 of the Government Code as well as sections 611.004 and 611.0045 of the Health and Safety 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, because

sections 560.002 and 560.003 of the Government Code specifically govern access to biometric identifiers and sections 611.004 and 611.0045 of the Health and Safety Code specifically govern access to mental health records, these provisions are more specific than the general confidentiality section 58.007(b) of the Family Code provides for juvenile probation records. Thus, the statutory right of access granted by section 560.002 of the Government Code and sections 611.004 and 611.0045 of the Health and Safety Code prevail over the more general confidentiality provision of section 58.007(b) of the Family Code. *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). Therefore, the marked juvenile's fingerprints must be released to this requestor under section 560.002 of the Government Code and the marked mental health record may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The department must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.¹

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 387960

Enc. Submitted documents

c: Requestor
(w/o enclosures)