



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2010

Ms. Judith Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2010-11886

Dear Ms. Benton:

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# 389385 (LGL-10-527 and LGL-10-528).

The Waco Police Department (the "department") received two requests from the same requestor for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 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. Section 58.007 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.

Fam. Code § 58.007(c). We agree the submitted information involves juvenile delinquent conduct, so as to fall within the scope of section 58.007(c). *See id.* §§ 51.03(a)-(b) (defining “delinquent conduct” for purposes of title 3 of the Family Code), .02(2) (defining “child” for purposes of section 58.007(c) as a person who is ten years of age or older and under seventeen years of age). Thus, the submitted information is generally confidential under section 552.101 in conjunction with section 58.007(c).

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”).¹ 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 agency, as appropriate, shall have access to any records or documents, including client-identifying information 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 or disabled person. A person or agency 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.

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 general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an

¹*See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

exception to 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. In addition, we note section 48.154 is the later enacted statute.² 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).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which excepts from disclosure private facts about an individual. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common-law right of privacy if the information (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Id.* at 685.

In Open Records Decision No. 393 (1983), this office concluded generally only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the submitted information relates to an investigation of an alleged sexual assault, and the requestor knows the identity of the alleged victim. Under these circumstances, withholding only the victim's identity would not preserve her common-law privacy. Thus, the department would ordinarily be required to withhold all of the submitted information under section 552.101 in conjunction with common-law privacy.

However, as previously noted, the requestor has a right of access to the submitted information under section 48.154 of the Human Resources Code. Although the information

²The 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).

at issue is confidential under common-law privacy, a statutory right of access generally prevails over the common law. *See Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common-law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common-law principle). Therefore, because the requestor's statutory right of access prevails over common-law privacy, none of the submitted information may be withheld on privacy grounds.

Lastly, you contend the submitted information is excepted under section 552.108 of the Government Code.³ Section 552.108, however, is a general exception to disclosure under the Act. A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act)*. Thus, because the requestor's statutory right of access prevails over section 552.108, the department may not withhold any of the submitted information on that basis. Accordingly, the submitted information must be released to the requestor.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

³Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ... if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1).

Ref: ID# 389385

Enc. Submitted documents

c: Requestor
(w/o enclosures)