



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2010

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-14661

Dear Ms. Brown:

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# 394845.

The Plano Police Department (the "department") received a request for information pertaining to a specified arrest of a named individual. You claim that 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 representative sample of information.¹

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. Section 58.007 provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See Fam.*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). The relevant part of section 58.007(c) 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 Subchapters B, D, and E.

Id. § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we agree the submitted information constitutes law enforcement records of a juvenile who engaged in delinquent conduct after September 1, 1997. Thus, the submitted information is generally confidential under section 58.007(c) of the Family Code.

In this instance, the requestor is an investigator with the Texas Department of Licensing and Regulation (the “TDLR”). We note sections 411.093 and 411.122 of the Government Code both provide that the TDLR is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who is an applicant for a license issued by the TDLR. Gov’t Code §§ 411.093(a), .122(a)(1), .122(d)(10). Furthermore, section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, when read together, sections 411.087, 411.093, and 411.122 of the Government Code may grant the TDLR a right of access to CHRI in the submitted information. The requestor does not state, and we are not able to determine, whether the information the requestor seeks relates to an applicant for a license issued by the TDLR. Thus, we are unable to conclude whether sections 411.087, 411.093, and 411.122 of the Government Code give the requestor a right of access to any portion of the submitted report; thus, we must rule conditionally. If the department determines the information does not

relate to a license applicant, the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. If the department determines the information the requestor is seeking relates to an applicant for a license issued by the TDLR, then, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the requestor is authorized to obtain CHRI from the department. In that instance, we must address the conflict between section 58.007(c) of the Family Code and sections 411.087, 411.093, and 411.122 of the Government Code.

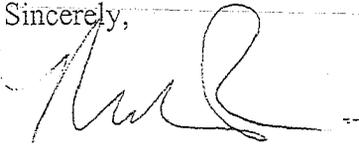
Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *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, although section 58.007(c) generally makes juvenile law enforcement records confidential, sections 411.093 and 411.122, in concert with section 411.087, of the Government Code give one specific requestor, the TDLR, access to particular information, CHRI, found in records involving particular individuals, applicants for a license issued by the TDLR. *See Gov't Code* §§ 411.087, .093(a), .122(a)(1), .122(d)(10); *Fam. Code* § 58.007. Thus, the statutory right of access granted to the TDLR by sections 411.087, 411.093, and 411.122 of the Government Code prevails over the more general confidentiality provisions of section 58.007(c) of the Family Code. Therefore, if the department determines the information the requestor is seeking relates to an applicant for a license issued by the TDLR, then, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The department must withhold the remaining information in the submitted report under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the department determines the information does not relate to a license applicant, the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code.

In summary, if the department determines the information does not relate to a license applicant, the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 58.007(c) of the Family Code. If the department determines the information the requestor is seeking relates to an applicant for a license issued by the TDLR, then, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the department must withhold the remaining information in the submitted report 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.oag.state.tx.us/open/index_ori.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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 394845

Enc. Submitted documents

cc: Requestor
(w/o enclosures)