



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2010

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-14919

Dear Mr. Bounds:

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# 395368.

The Corpus Christi Police Department (the "department") received a request for all information the department possesses in reference to a specified incident. You state the department released some information to the requestor. You claim 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 information.

Initially, you state most of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2010-6329 (2010), 2010-6927 (2010), and 2010-7391 (2010). In those decisions, this office found the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. As we have no indication the law, facts, or circumstances on which the prior rulings were based have changed, the department must continue to rely on those rulings as previous determinations and withhold any previously ruled upon information in accordance with the prior rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously ruled upon, we will consider your arguments against its disclosure.

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 protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(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). 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 at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information involves juvenile delinquent conduct. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of the Family Code). It does not appear any of the exceptions in section 58.007 apply. Therefore, we find the submitted information is generally confidential under section 58.007(c).

However, the submitted information includes emergency medical service (“EMS”) records that are subject to chapter 773 of the Health and Safety Code.¹ Access to EMS records is governed by the provisions of section 773.091 of the Health and Safety Code, which is also encompassed by section 552.101 of the Government Code. Section 773.091 provides in part the following:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course or providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical

¹We note the EMS records were not previously ruled upon in Open Records Letter Nos. 2010-6329 (2010), 2010-6927 (2010), or 2010-7391 (2010).

supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a), (b), (g). We note an EMS record may be released to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf.” *Id.* § 773.092(e)(4). The consent must be in writing, signed by the patient, authorized representative, or personal representative, and specify (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* § 773.093(a). Therefore, the requestor’s client’s EMS records are confidential under section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), but must be released if the requestor provides the department with written consent for release that meets the requirements of section 773.093(a). *See id.* §§ 773.092, .093.

Thus, although the information at issue is generally confidential under section 58.007(c) of the Family Code, section 773.092(e) of the Health and Safety Code may provide the requestor with a right of access to his client’s EMS records. Therefore, there is a conflict between section 58.007(c) and section 773.092(e). Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See Gov’t Code § 311.026(b); City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). Although section 58.007(c) generally makes juvenile law enforcement records confidential, section 773.092(e) specifically permits the release of an EMS record to a person who bears written consent of the patient. Therefore, notwithstanding the provision of section 58.007(c), we conclude the requestor’s client’s EMS records at issue must be released to the requestor pursuant to section 773.092(e) if the department receives the required authorization for release that complies with section 773.093(a). In that event, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007(c). If the department does not receive the required authorization for release of the EMS records, then the department must withhold the submitted information in its entirety under section 552.101 in conjunction with section 58.007(c).

In summary, the department must continue to rely on Open Records Letter Nos. 2010-6329, 2010-6927, and 2010-7391 as previous determinations and withhold any information previously ruled upon in accordance with the prior rulings. If the department does not receive an authorization that complies with section 773.093(a) of the Health and Safety Code for release of the EMS records, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department receives an authorization for release that complies with section 773.093(a) of the Health and Safety Code, the department must release the requestor's client's EMS records and withhold the remaining information 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_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

Ref: ID# 395368

Enc. Submitted documents

c: Requestor
(w/o enclosures)