



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2010

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County
500 East San Antonio
Room 503, County Courthouse
El Paso, Texas 79901

OR2010-15129

Dear Ms. Monteros:

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# 395649 (CA-OP-10-297).

The El Paso County Sheriff's Office (the "sheriff") received a request for case number 10-06-00859. You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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(c). Section 58.007 provides in relevant part:

(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). In order for section 58.007(c) to apply, a child must be identified in the information at issue as a suspect or offender. *See id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party. Upon review, we find none of the submitted information identifies a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Therefore, we conclude you have failed to establish section 58.007(c) is applicable to the submitted information, and it may not be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses information protected by section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). You state the submitted information was used or developed in an investigation of an alleged injury to a child. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also* Penal Code § 22.04(c) (defining “child” for

purposes of injury to a child as a person 14 years of age or younger). Based on your representations and our review, we find the submitted information is within the scope of section 261.201. You have not indicated the sheriff has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. It does not appear any of the exceptions in section 261.201 apply. Given that assumption, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, the submitted information contains the requestor's fingerprints. Fingerprints are governed by chapter 560 of the Government Code, which is also encompassed by section 552.101. Section 560.001(1) provides that "[b]iometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Under section 560.003 of the Government Code, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003. Section 560.002 states, 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). Accordingly, we find a person, or the person's authorized representative, has a right of access under section 560.002(1)(A) to that person's biometric information. Thus, the requestor has a right of access to his fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

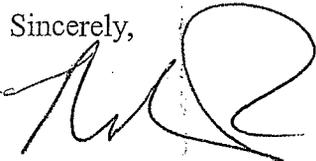
Although the document containing the requestor's fingerprints is generally confidential under section 261.201 of the Family Code, section 560.002 of the Government Code provides the requestor with a right of access to his fingerprints. Therefore, in this instance, there is a conflict between the confidentiality provision of section 261.201 and the right of access provision of section 560.002. 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.). In this instance, although section 261.201 generally makes records of alleged child abuse confidential, section 560.002 specifically permits release of fingerprints to certain parties. We, therefore, conclude the marked fingerprints in the document at issue may not be withheld from this requestor under section 261.201. Likewise, exceptions in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993); *see also* 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Consequently, the fingerprints we have marked may not be withheld from this requestor under section 552.103 or section 552.108 of the Government Code, which you also raise as exceptions to disclosure. Thus, the sheriff must release the marked fingerprints to this requestor under section 560.002 of the

Government Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 395649

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.