



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2010

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2010-17623

Dear Ms. Sims:

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# 401292.

The City of Lubbock (the "city") received a request for information pertaining to three specified cause numbers. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception 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." This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides as follows:

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 note the submitted documents involve juvenile conduct occurring after September 1, 1997. None of the exceptions in section 58.007 appears to apply. Therefore, the submitted information is confidential pursuant to section 58.007(c) of the Family Code.

However, the submitted information contains the requestor's dental records. Section 258.102 of the Occupations Code provides in pertinent part as follows:

~~(a) The following information is privileged and may not be disclosed except as provided by this subchapter:~~

(1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and

(2) a dental record.

Occ. Code § 258.102(a). A person who receives information that is privileged under section 258.102 of the Occupations Code may disclose that information to another person only to the extent that disclosure is consistent with the purpose for which the information was obtained. *See id.* § 258.108. A "dental record" means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *See id.* § 258.101(1). Information that is privileged under chapter 258 of the Occupations Code may be disclosed only under certain specified circumstances. *See id.* § 258.104 (consent to disclosure). The written consent for the release of privileged information required under section 258.104 must specify (1) the information covered by the release, (2) the person to whom the information is to be released, and (3) the purpose for the release. *Id.* § 258.104(c).

Although the submitted information is confidential under section 58.007 of the Family Code, section 258.104 may provide the requestor with a right of access to the portion of the information consisting of his dental records. Therefore, there is a conflict between the confidentiality provisions of section 58.007 of the Family Code and the access provisions of section 258.104 of the Occupations Code. 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 that the

legislature intended the general provision to prevail. Gov't Code § 311.026(b); see *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *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); Op. Tex. Att’y Gen. Nos. GA-0806 at 3 (2010), JC-0110 at 3 (1999); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Although section 58.007 makes juvenile law enforcement records confidential, section 258.104 specifically permits release of dental records to certain parties when the proper consent is received. Accordingly, section 258.104 is more specific than section 58.007. We also note section 258.104 and the other relevant sections of subchapter C of chapter 258 of the Occupations Code were enacted later than section 58.007.¹ Thus, we conclude the access provisions to dental records provided under section 258.104 of the Occupations Code are more specific than the general confidentiality provisions of section 58.007 of the Family Code. In addition, although you also claim the dental records are excepted under section 552.108 of the Government Code, section 258.104 prevails over the general exceptions to disclosure under the Act. See Open Records Decision No. 451 at 4 (1986). Thus, the city may only release the marked dental records in accordance with chapter 258 of the Occupations Code. However, it must withhold the remaining information under section 552.101 in conjunction with section 58.007.²

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.

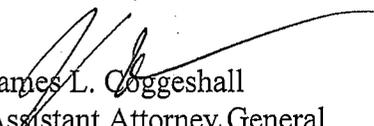
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹Compare Occ. Code §§ 258.101-258.109, Act of May 24, 2001, 77th Leg., R.S., ch 1420, § 14.086(b), 2001 Tex. Gen. Laws 4375, 4375-4378, with Fam. Code § 58.007, Act of May 29, 1995, 74th Leg., R.S., ch. 262, § 53, 1995 Tex. Gen. Laws 2549, 2552-53, amended by Act of June 2, 1997, 75th Leg., R.S., ch. 1086, § 19, 1997 Tex. Gen. Laws 4187, amended by Act of June 2, 1997, 75th Leg., R.S., ch. 1086, § 20, 1997 Tex. Gen. Laws 4187, amended by Act of May 27, 1999, 76th Leg., R.S. ch. 815, § 1, 1999 Tex. Gen. Laws 3448, amended by Act of May 30, 1999, 76th Leg., R.S., ch. 1415, § 20, 1999 Tex. Gen. Laws 4840, amended by Act of May 30, 1999, 76th Leg., R.W., ch. 1477, § 18, 1999 Tex. Gen. Laws 5084, 5084-85, amended by Act of May 26, 2001, 77th Leg., R.S., ch. 1297, § 37, 2001 Tex. Gen. Laws 3156, amended by Act of May 28, 2007, 80th Leg., R.S., ch. 879, § 1, 2007 Tex. Gen. Laws 1893, amended by Act of May 28, 2007, 80th Leg., ch. 908, § 17, 2007 Tex. Gen. Laws 2282, amended by Act of May 12, 2009, 81st Leg., R.S., ch. 87, § 25.061, 2009 Tex. Gen. Laws 355.

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tp

Ref: ID# 401292

Enc. Submitted documents

c: Requestor
(w/o enclosures)