



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2011

Ms. Delietrice Henry  
Open Records Assistant  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2011-17659

Dear Ms. Henry:

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# 437435 (ORR #WEIL090811).

The Plano Police Department (the "department") received a request for information related to a named individual. You state some of the requested information has been released. 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 information you submitted.

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 exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 58.007 of the Family Code, which provides in 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); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code title 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75<sup>th</sup> Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of Fam. Code title 3). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We note some of the information you seek to withhold under section 58.007(c) involves traffic offenses. Section 58.007 does not make information related to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense). We therefore conclude the department may not withhold the submitted records of traffic offenses under section 552.101 on the basis of section 58.007 of the Family Code. We agree report number 2004-00142376 involves a juvenile offense and is therefore confidential under section 58.007(c) of the Family Code.

In this instance, however, the requestor is a representative of the Dallas County Domestic Relations Office (the “domestic relations office”).<sup>1</sup> The requestor states she has been appointed by the Dallas County Family District Courts to complete a court-ordered social study regarding an individual to whom report number 2004-00142376 pertains. Section 58.007 of the Family Code also provides that “[l]aw enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 [of the Family Code and] a criminal justice agency as that term is defined by Section 411.082, Government Code[.]” *Id.* § 58.007(e). Section 58.101(5) of the Family Code defines a “juvenile justice agency” as an agency that has custody or control over juvenile offenders. Section 411.082(3) of the Government Code defines a “criminal justice agency” as “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice.” Gov’t Code § 411.082(3)(A). You do not indicate, and we are not otherwise able to determine, whether the requestor seeks access to the information subject to section 58.007 of the Family Code on behalf of a juvenile justice

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<sup>1</sup>A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of [title 5 of the Family Code].” Fam. Code § 203.001(2).

agency or a criminal justice agency for purposes of section 58.007(e) of the Family Code. Nevertheless, if the department is able to determine that the requestor represents a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code, then the requestor has a right of access to report number 2004-00142376 under section 58.007(e). Otherwise, the requestor has no right of access to that report, and the department must withhold report number 2004-00142376 from the requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note a release of information made confidential by section 58.007(c) under the authority of section 58.007(e) would not constitute a disclosure of confidential information to the public for the purposes of section 552.352 of the Government Code or a selective disclosure of information to the public for the purposes of section 552.007. *See* Open Records Decision Nos. 680 at 7-8 (2003), 655 at 8-9 (1997); *compare* Attorney General Opinion DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized, and receiving agency is not among statute's enumerated entities).

You also claim section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, which provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find the information submitted as Exhibit C was used or developed in investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261), 101.003 (defining “child” for purposes of Fam. Code title 5); Penal Code § 22.04(c) (defining child for purposes of offense of injury to a child). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the information in Exhibit C is confidential under section 261.201(a) and must generally be withheld on that basis under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 261.201 provides, however, that information encompassed by section 261.201(a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1285(a) of the Government Code provides in part that “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (the “DPS”)] criminal history record information that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.” Gov’t Code § 411.1285(a); *see* Fam. Code ch. 203 (governing administration of domestic relations offices). Additionally, section 411.087(a) of the Government Code provides in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Gov’t Code § 411.087(a)(2). “Criminal history record information” means “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). Although Exhibit C contains “criminal history record information,” a domestic relations office may only receive criminal history record information if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* ORD 655 (discussing limitations on release of criminal history record information).

As previously noted, the requestor is a representative of a domestic relations office conducting a court-ordered social study involving the individual who is the subject of this request for information. *See* Fam. Code § 107.051(b) (domestic relations office may perform court-ordered social study). Therefore, if the department determines that the information in Exhibit C is related to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code and that release of the information in question is consistent with chapter 261 of the Family Code, then the department must make available to the requestor any information in Exhibit C that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. Such information may not be released to the requestor, however, if the department determines either that the information in Exhibit C is not related to a person who is a party to a proceeding in which the domestic relations

office is providing services permitted under chapter 203 of the Family Code or that disclosure of the information in question is not consistent with chapter 261 of the Family Code. *See id.* § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); *see also* ORD 440 at 2; Attorney General Opinions DM-353 at 4 n.6 (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

We also note Exhibit C contains mental health records governed by provisions of chapter 611 of the Health and Safety Code. Section 611.002 provides in part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
  
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health and Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information made confidential by section 611.002 only by certain individuals, including “a person who has the written consent of the patient, or a parent if the patient is a minor[.]” *See id.* §§ 611.004(a)(4), 611.0045; Open Records Decision No. 565 (1990). We have marked mental health records that are confidential under section 611.002 of the Health and Safety Code but must be released to the requestor if she is authorized to obtain the mental health records under sections 611.004 and 611.0045 of the Health and Safety Code.

Thus, although Exhibit C is generally confidential under section 261.201 of the Family Code, sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to the mental health records. Therefore, there is a conflict between section 261.201 of the Family Code and the applicable provisions of chapter 611 of the Health and Safety 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 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 261.201 generally makes records of an investigation of alleged or suspected child abuse confidential, the applicable provisions of chapter 611 of the Health and Safety Code specifically permit the release of mental health records to certain parties and under certain circumstances. In this instance, the requestor is a representative of a parent of the child to whom the mental health records pertain. Therefore, notwithstanding the provisions of section 261.201 of the Family Code, the marked mental health records must be released to this requestor if the department receives the required authorization for the release of those records under sections 611.004 and 611.0045 of the Health and Safety Code.

Lastly, we note some of the remaining information in Exhibit B falls within the scope of section 552.130 of the Government Code.<sup>2</sup> This section excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document. *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The department must withhold the driver's license and personal identification numbers we have marked under 552.130 of the Government Code. Although Exhibit B also contains another driver's license number that falls within the scope of section 552.130, this exception protects personal privacy. In this instance, the requestor has provided documentation reflecting she is an authorized representative of the individual to whom the second driver's license number pertains. As such, the requestor has a right of access to information the department would be required to withhold from the public to protect the individual's privacy. *See* Gov't Code § 552.023.<sup>3</sup> Therefore, the department may not withhold the individual's driver's license number from this requestor under section 552.130. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).<sup>4</sup>

In summary, the department must withhold report number 2004-00142376 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, unless the requestor has a right of access to the information under section 58.007(e) as a representative of a juvenile justice agency or a criminal justice agency. The department must withhold the information in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, except for any information the requestor is authorized to obtain pursuant to sections 411.1285 and 411.087 of the Government Code and sections 611.004 and 611.0045 of the Health and Safety Code. The department must withhold the marked driver's license and personal identification numbers

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<sup>2</sup>This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>3</sup>Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

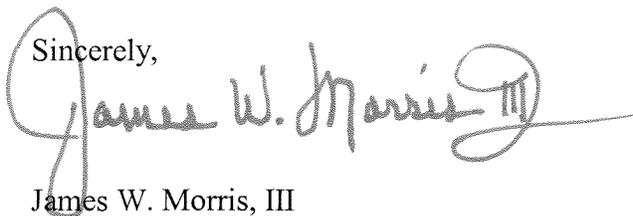
<sup>4</sup>We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). Therefore, if the department receives another request for these same records from a different requestor, section 552.130(c) authorizes the department to redact the individual's driver's license number without the necessity of requesting another decision.

under section 552.130 of the Government Code.<sup>5</sup> The rest of the submitted information must be released.

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](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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, stylized initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 437435

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note the remaining information at issue includes two social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to the social security number of the individual she represents. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).