



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2012

Mr. Charles D. Olson
Attorney for City of Bellmead
Haley & Olson, PC
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710

OR2012-03767

Dear Mr. Olson:

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# 452198.

The Bellmead Police Department (the "department"), which you represent, received a request for 21 categories of information pertaining to a specified incident. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 made confidential by other statutes, such as section 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. 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). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time the conduct occurred. *Id.* § 51.02(2). Upon review, we agree the submitted information involves a juvenile engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct”). It does not appear any of the exceptions in section 58.007 apply. *See id.* § 58.007. Therefore, the submitted information is subject to section 58.007(c) of the Family Code.

We note, however, the submitted information contains a CR-3 accident report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states, except as provided by subsection (c) or (e), accident reports are privileged and for the confidential use of certain specified entities. *Id.* § 550.065(b). Section 550.065(c)(4) also provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the department with the requisite pieces of information specified by the statute.

Although the submitted information is generally confidential under section 58.007 of the Family Code, section 550.065(c)(4) requires the accident report to be released to the requestor because he supplied the required information. Therefore, there is a conflict between the provisions of section 58.007 of the Family Code and section 550.065(c)(4) of the Transportation 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.). In this instance, although section 58.007 generally pertains to all juvenile law enforcement records, section 550.065(c)(4) specifically pertains to accident reports. Therefore, in this instance, section 550.065 governs the release of the submitted accident

report. Accordingly, the department must release the submitted CR-3 accident report, which we have marked, pursuant to section 550.065(c)(4) of the Transportation Code.

The submitted information also includes emergency medical service (“EMS”) records of the requestor’s client that are subject to chapter 773 of the Health and Safety Code. 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 of 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 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). As noted above, 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*, 555 S.W.2d at 168. 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, which we have marked, 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 summary, the marked CR-3 accident report form must be released to this requestor pursuant to section 550.065(c) of the Transportation Code. The marked EMS records must be released to this requestor if the department receives the required authorization for release that complies with section 773.093(a) of the Health and Safety Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 452198

Enc. Submitted documents

c: Requestor
(w/o enclosures)