



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2012

Ms. Tiffany Bull
Assistant City Attorney
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR2012-04492

Dear Ms. Bull:

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# 448840 (APD Ref. No. 6316).

The Arlington Police Department (the "department") received two requests for (1) the number of police calls made from a specified address over a specified period of time, (2) the number of these calls made by a named individual, and (3) all records regarding the named individual.¹ You state the department is releasing some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note Exhibit D is a report which involves alleged violations of section 32.51 of the Penal Code, which provides "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses . . . identifying information of

¹You state the city sought clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

another person without the other person's consent[.]” Penal Code § 32.51(b)(1). For purposes of section 32.51, “identifying information” includes an individual’s name, a financial institution account number, a telecommunication access device, a social security number, or other government-issued identification number. *Id.* § 32.51(a)(1)(A), (C), (D), (E), (a)(2). Article 2.29 of the Code of Criminal Procedure pertains to alleged violations of section 32.51 that occurred on or after September 1, 2005 and provides as follows:

(a) A peace officer to whom an alleged violation of Section 32.51, Penal Code, is reported shall make a written report to the law enforcement agency that employs the peace officer that includes the following information:

- (1) the name of the victim;
- (2) the name of the suspect, if known;
- (3) the type of identifying information obtained, possessed, transferred, or used in violation of Section 32.51, Penal Code; and
- (4) the results of any investigation.

(b) On the victim’s request, the law enforcement agency shall provide the report created under Subsection (a) to the victim. In providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, other than the information described by Subsection (a).

Crim. Proc. Code art. 2.29. For purposes of article 2.29, an offense is committed on or after September 1, 2005, if no “element of the offense occurs before that date.” Act of June 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

The report at issue pertains to an individual “obtaining” another person’s bank number, social security number, and government-issued identification cards without consent, which constitutes an alleged violation of section 32.51. *See* Penal Code § 32.51(b)(1). The requestor in this instance is the victim listed in the report, and the alleged offense occurred after September 1, 2005. Accordingly, Exhibit D is subject to article 2.29 of the Code of Criminal Procedure and must be released to the requestor except to the extent it contains confidential information. You assert Exhibit D is confidential pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As this exception is a confidentiality provision, we will address its applicability.

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. Section 552.101 encompasses confidentiality provisions such as

section 58.007 of the Family Code. The relevant language of section 58.007 reads as follows:

(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). Upon review, we find Exhibit D and the information we marked in Exhibit B pertain to alleged juvenile delinquent conduct that occurred after September 1, 1997. *See id.* §§ 51.02 (defining “child” as a person who is ten years of age or older and younger than seventeen years of age), .03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). You indicate none of the exceptions in section 58.007 apply to this information. Accordingly, we conclude this information is generally confidential under section 58.007 of the Family Code.

As previously noted, however, article 2.29(b) of the Code of Criminal Procedure provides the requestor with a right of access to this information. But article 2.29(b) also states “[i]n providing the report, the law enforcement agency shall redact any otherwise confidential information that is included in the report, *other than the information described by Subsection (a).*” Crim. Proc. Code art. 2.29(b) (emphasis added). Accordingly, the department is authorized by article 2.29(b) to withhold most of Exhibit D pursuant to section 58.007(c) of the Family Code as confidential information. However, because article 2.29(b) provides the requestor with a right of access to the information described in article 2.29(a), which is also subject to section 58.007(c), there is a conflict between the provisions of section 58.007(c) and article 2.29(b) with regard to the information described by article 2.29(a). 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(c) of the Family Code generally makes juvenile law enforcement records confidential, article 2.29(b) of the Code of Criminal Procedure specifically requires release of particular information in a report alleging a violation of section 32.51 of the Penal Code to the victim listed in the report. *See* Crim. Proc. Code art. 2.29; Fam. Code § 58.007. In addition, article 2.29 was enacted in a later legislative session than section 58.007(c). *See* Act of Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(a), 2005 Tex. Gen. Laws 885 (enacting article 2.29 of the Code of Criminal Procedure); Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 53, 100, 106, 1995 Tex. Gen. Laws 2517 (enacting section 58.007(c) of the Family Code). Therefore, article 2.29(b) of the Code of Criminal Procedure prevails as an exception to section 58.007(c) of the Family Code. Further, we note a specific statutory right of access prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, notwithstanding the provisions of section 58.007(c), the department must release the information in Exhibit D listed in article 2.29(a) to the requestor pursuant to article 2.29(b).² The remaining information in Exhibit D and the information we have marked in Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, 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.

²Because the requestor has a right of access to certain information that otherwise would be confidential, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Fam. Code § 261.201(a). You assert portions of the information are confidential under section 261.201 of the Family Code. Upon review, we agree this information and the information we have marked were 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 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the information you have marked and the information we have marked is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.³

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We agree the information you have marked is highly intimate or embarrassing and not of legitimate public concern. However, we note the submitted information does not identify the individual to whom this information pertains and, therefore, does not implicate any individual’s right to privacy. Therefore, the department may not withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must release from Exhibit D the information listed in article 2.29(a) of the Code of Criminal Procedure to the requestor. The remaining information in Exhibit D and the information we have marked in Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The information you have marked and the information we have marked must

³As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. The remaining 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, 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, appearing to read "Michelle R. Garza", with a long horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/eb

Ref: ID# 448840

Enc. Submitted documents

c: Requestor
(w/o enclosures)