



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2012

Ms. Cheryl K. Byles  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2012-09311

Dear Ms. Byles:

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# 456411 (Fort Worth PIR No. W015875).

The Fort Worth Fire Department (the "department") received a request for information pertaining to a specified incident. 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 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. Section 552.101 encompasses information protected by other statutes. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. Fam. Code § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). 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.

*Id.* § 58.007(c). For purposes of section 58.007(c), a “child” is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree the submitted information involves a child engaged in delinquent conduct that occurred after September 1, 1997. It does not appear any of the exceptions in section 58.007 of the Family Code apply. Thus, the submitted report is generally confidential pursuant to section 58.007(c).

We note the requestor is a representative of the Office of the Attorney General (the “OAG”). The requestor states he is requesting the information pursuant to article 56.38(d) of the Code of Criminal Procedure. Subchapter B of chapter 56, which contains article 56.38, is the Crime Victims’ Compensation Act. Crim. Proc. Code art. 56.31. Article 56.38(d) provides:

On request by the [OAG], . . . a law enforcement agency shall release to the [OAG] all reports, including witness statements and criminal history record information, for the purpose of allowing the [OAG] to determine whether a claimant or victim qualifies for an award and the extent of the qualification.

*Id.* art. 56.38(d). A law enforcement agency for purposes of chapter 56 is defined as “a governmental organization that employs commissioned peace officers as defined by [article 2.12 of the Code of Criminal Procedure].” 1 T.A.C. § 61.101(a)(4); *see* Crim. Proc. Code art. 56.33(a) (authorizing the OAG to adopt rules governing the administration of the Crime Victims’ Compensation Program). Pursuant to article 2.12, “peace officer” includes “each member of an arson investigating unit commissioned by a city, a county, or the state[.]” Crim. Proc. Code art. 2.12(7). The submitted information pertains to an arson investigation by the department. Upon review, we find the department’s arson investigating division is a law enforcement agency for purposes of subchapter B of chapter 56. *See generally* Open Records Decision No. 127 at 8 (1976) (concluding arson investigating unit

of a fire department is a law enforcement agency). The requestor states the victim in the submitted information has filed an application with the Crime Victims' Compensation Program. Thus, we conclude the department must generally release the submitted information to the requestor pursuant to article 56.38(d) of the Code of Criminal Procedure.

Although the submitted information is confidential under section 58.007(c) of the Family Code, article 56.38(d) of the Code of Criminal Procedure gives the requestor a right of access to the submitted information. Therefore, there is a conflict between the confidentiality of section 58.007(c) of the Family Code and the right of access afforded to the OAG under article 56.38(d) of the Code of Criminal Procedure. Where general and specific provisions 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. *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) generally makes all juvenile law enforcement records confidential, article 56.38(d) specifically requires release of reports requested by the OAG to determine the qualification and extent of an award to an individual who has filed an application for crime victim compensation. Accordingly, article 56.38(d) prevails over section 58.007(c). You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code. However, this office has found a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See Open Records Decision Nos.* 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986). Additionally, although a portion of the submitted information is subject to common law privacy, we note a specific statutory right of access generally prevails over the common law. *See Cash Am. Int'l Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute abrogates common law principle only when its express terms or necessary implications clearly indicate Legislature's intent to do so and requires clear repugnance between common law and statutory causes of action); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the department must release the submitted information in its entirety to the requestor pursuant to article 56.38(d) of the Code of Criminal Procedure.<sup>1</sup>

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.

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<sup>1</sup>Because this requestor has a right of access to information the department would be required to withhold from the general public, the department should request another decision if it receives another request for this same information from a different requestor. *See Gov't Code* §§ 552.301(a), .302.

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,



Charles Galindo Jr.  
Assistant Attorney General  
Open Records Division

CG/bs

Ref: ID# 456411

Enc. Submitted documents

c: Reqeustor  
(w/o enclosures)