



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2013

Ms. Evelyn W. Njuguna
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2013-13502

Dear Ms. Njuguna:

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# 495238 (ORU No. 13-2845).

The Houston Police Department (the "department") received a request for a specified offense report. 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 the submitted information involves an alleged violation of section 32.51 of the Penal Code, which provides that "[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of 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 and financial institution account number. *Id.* § 32.51(a)(1)(A), (C). 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:

(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 Jun. 17, 2005, 79th Leg., R.S., ch. 294, § 1(b), 2005 Tex. Gen. Laws 885.

In this instance, the submitted information pertains to alleged credit card or debit card abuse, which constitutes an alleged violation of section 32.51. The requestor is the victim of the alleged identity theft listed in this information, and the alleged offense occurred after September 1, 2005. Therefore, the submitted information 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. *See* Crim. Proc. Code art. 2.29.

You seek to withhold the submitted information under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, no portion of the submitted information may be withheld under section 552.108 of the Government Code. You also assert this information 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian[.]

Fam. Code § 58.007(c), (e). Juvenile law enforcement records relating to delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of Fam. Code title 3). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. Thus, this information is subject to section 58.007. We note the submitted information reveals the requestor is the foster parent of the juvenile offender listed in the report. Section 58.007(e) allows a child's guardian access to the child's law enforcement records. *See id.* § 58.007(e). Section 51.02(4) of the Family Code defines a guardian as "the person, who, under court order, is the guardian of the person of the child or public or private agency with whom the child has been placed by the court." *Id.* § 51.02(4). We understand foster children are generally under the conservatorship of the Texas Department of Family and Protective Services ("DFPS"), and the courts may order certain parties, such as foster parents, to provide certain care and to have certain responsibilities. *See, e.g., id.* §§ 161.207-208, 263.001, 264.122, 266.001, 266.004. The requestor's rights as a guardian of the foster child at issue are to be determined by order of the court and as approved by DFPS. Accordingly, if the department determines the requestor is the guardian of the foster child for purposes of section 58.007, then the requestor may inspect or copy the submitted information pursuant to section 58.007(e) and this information must be released to this requestor pursuant to article 2.29 of the Code of Criminal Procedure. If the department

determines the requestor is not the guardian of the foster child for purposes of section 58.007, then the information at issue is generally confidential under section 58.007(c).

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 the submitted information 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(c). 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 Code of Criminal Procedure article 2.29); Act of May 27, 1995, 74th Leg., R.S., ch. 262, §§ 53, 100, 106, 1995 Tex. Gen. Laws 2517 (enacting Family Code section 58.007(c)). Therefore, notwithstanding the provisions of section 58.007(c), the department must release the information listed in article 2.29(a) to the requestor pursuant to article 2.29(b). The remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, if the department determines the requestor is the guardian of the foster child for purposes of section 58.007 of the Family Code, then the requestor may inspect or copy the submitted information pursuant to section 58.007(e) of the Family Code and this information must be released to the requestor pursuant to article 2.29 of the Code of Criminal Procedure. If the department determines the requestor is not the guardian of the foster child for purposes of section 58.007 of the Family Code, then the department must release the information listed in article 2.29(a) of the Code of Criminal Procedure to the requestor pursuant to article 2.29(b) of the Code of Criminal Procedure. However, the remaining submitted

information must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtm1, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 495238

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the department must again seek a decision from this office if it receives a request for this information from a different requestor.