



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2013

Ms. Rachel L. Lindsay
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-15302

Dear Ms. Lindsay:

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# 498095 (McKinney ORR 10-7604).

The McKinney Police Department (the "department"), which you represent, received a request for the criminal history of a named individual, including information pertaining to eight specified arrests. You state the department has released most of the responsive information to the requestor. You claim the remaining requested 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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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), “child” means a person who is ten years of age or older and younger than seventeen years of age. *See id.* § 51.02(2). Upon review, we find the submitted report involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). Thus, this information is generally confidential under section 58.007(c) of the Family Code.

However, section 58.007(e) of the Family Code provides, “[l]aw 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 [of the Family Code] [or] a criminal justice agency as that term is defined by Section 411.082, Government Code[.]” *Id.* § 58.007(e). Section 411.082 of the Government Code defines a “criminal justice agency” as including “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).

In this instance, the requestor is a representative of the United States District Court for the Eastern Division of Texas’s Probation and Pretrial Service Office. You do not indicate, and we are not otherwise able to determine, whether the requestor seeks access to the submitted information on behalf of a juvenile justice agency or a criminal justice agency for the purposes of section 58.007(e) of the Family Code. Thus, if the department determines 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 the submitted information under section 58.007(e) of the Family Code, and it must be released to the requestor. We note that 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). However, if the requestor has no right of access to the submitted

information, then it must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code as information made confidential by law.

We note, however, the submitted information contains motor vehicle record information that is subject to section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Upon review, we find the information we have marked consists of motor vehicle record information. Thus, the marked motor vehicle record information is generally excepted from disclosure under section 552.130 of the Government Code.

However, as previously noted, the requestor may have a statutory right to inspect the submitted information pursuant to section 58.007(e) of the Family Code. Therefore, we must address the conflict between the access provided under section 58.007(e) of the Family Code and the confidentiality provided under section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 58.007(e) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. Although a specific statutory right of access prevails over general exceptions to disclosure under the Act, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 58.007(e). Accordingly, to the extent the requestor has a right of access to the submitted information under section 58.007(e) of the Family Code, the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code and release the remaining information to the requestor.

In summary, if the department determines 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 submitted information must be released to the requestor pursuant to section 58.007(e) of the Family Code. In releasing the submitted information, the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code.¹ However, if the department determines the requestor does not represent a juvenile justice agency or a criminal justice agency, as provided by section 58.007(e) of the Family Code,

¹We note, to the extent the information is being released, this requestor has a special right of access under section 58.007(e) of the Family Code. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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,

A handwritten signature in black ink that reads "Jennifer Burnett". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 498095

Enc. Submitted documents

c: Requestor
(w/o enclosures)