



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 18, 2016

Mr. Omar A. De La Rosa  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2016-11394

Dear Mr. De La Rosa:

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# 610583 (CoEP Case# 16-1026-7219).

The El Paso Police Department (the "department") received a request for a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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. You claim the submitted information is confidential pursuant to section 58.007(c) of the Family Code, which applies to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. However, we note section 58.007 is inapplicable, in this instance, because the conduct at issue occurred in 1990. Accordingly, we will address the applicability of former section 51.14 of the Family Code.

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines apply to the information at issue. Therefore, we assume you no longer assert these doctrines. See Gov't Code §§ 552.301, .302.

Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Former section 51.14(d) was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided, in relevant part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). A “child” is defined as a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Exhibit B pertains to an incident that occurred prior to January 1, 1996, in which two of the listed suspects were ten years of age or older and under seventeen years of age at the time of the offense. Further, the requestor does not fall within one of the categories in former section 51.14(d) under which inspection of the records would be permitted. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1)–(3)). Therefore, we find former section 51.14(d) is applicable to the submitted information. Fam. Code § 51.04(a) (Title 3 covers cases involving the delinquent conduct engaged in by a child). Accordingly, the department must generally withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

We note, however, the submitted information contains the requestor’s spouse’s fingerprints. Access to fingerprint information is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 provides in part that “[i]n this chapter . . . ‘[b]iometric identifier’ means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.” Gov’t Code § 560.001(1). Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. Section 560.002 provides, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Thus, section 560.002(1)(A) of the

Government Code gives an individual or that individual's authorized representative a right of access to the individual's own fingerprint information. Accordingly, if the requestor is acting as the authorized representative of her spouse, she generally has a right of access to his fingerprints, which we have marked, under section 560.002(1)(A) of the Government Code.

Generally, law enforcement records involving juvenile delinquent conduct that occurred prior to January 1, 1996, are confidential under former section 51.14(d) of the Family Code and must be withheld in their entirety under section 552.101 of the Government Code. However, because this requestor may have a right of access to her spouse's fingerprint information, we find there is a conflict of laws between former section 51.14(d) of the Family Code and section 560.002 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See 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, because section 560.002 of the Government Code specifically governs access to biometric identifiers, this provision is more specific than the general confidentiality former section 51.14(d) of the Family Code provides for juvenile law enforcement records. Thus, the statutory right of access granted by section 560.002 prevails over the more general confidentiality provision of former section 51.14(d). *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is specific, then the specific controls); *see also* Gov't Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision). Additionally, we note a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, if the requestor is acting as the authorized representative of her spouse, her spouse's marked fingerprints must be released to her pursuant to section 560.002 of the Government Code.<sup>2</sup> In that event, the remaining information must be withheld pursuant to section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. However, if the requestor is not acting as the authorized representative of her spouse, the department must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.<sup>3</sup>

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<sup>2</sup>Because this requestor has a special right of access to information being released, in the event the department receives another request for this information from someone without such a right of access, the department must against ask this office for a ruling.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

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](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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

Ref: ID# 610583

Enc. Submitted documents

c: Requestor  
(w/o enclosures)