



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2009

Mr. Mack Reinwand
Assistant City Attorney
Arlington Police Department, Legal Division
P.O. Box 1065
Arlington, Texas 76004-1065

OR2009-12414

Dear Mr. Reinwand:

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# 354152 (APD Reference # 2009-06-102).

The Arlington Police Department (the "department") received a request for a specified report. You claim that 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. This section encompasses information protected by other statutes, such as the confidentiality provisions of Family Code section 58.007. Section 58.007(c) 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). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The submitted report pertains to juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Thus, section 58.007 of the Family Code is applicable to the submitted report. We note, however, in this instance, the requestor is a Child Care Licensing Investigator with the Department of Family and Protective Services (“DFPS”). Thus, section 411.114 of the Government Code may be applicable to the submitted report.

Section 411.114 of the Government Code states in pertinent part:

(a)(2) [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by the [DPS] that relates to a person who is:

(A) an applicant for a license, registration, certification, or listing under Chapter 42, Human Resources Code, or Chapter 249, Health and Safety Code;

(B) an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, family home, or maternity home licensed, registered, certified, or listed under Chapter 42, Human Resources Code, or Chapter 249, Health and Safety Code;

(C) a person 14 years of age or older who will be regularly or frequently working or staying in a child-care facility, family home, or maternity home while children are being provided care, other than a child in the care of the home or facility[.]

(4) Subject to Section 411.087, the [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(A)-(C), (4)(B). For purposes of section 411.114, CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See generally id.* § 411.082(2). In this case, the requestor states she is requesting a specified police report involving two named individuals in order to expedite a current "residential Child Care Licensing investigation." We are unable to conclude whether section 411.114 of the Government Code gives the requestor a right of access to any of the submitted report; thus, we must rule conditionally. *See id.* § 411.114; *see also id.* § 411.082(2). To the extent either of the two named individuals in the submitted report do not fall within the purview of section 411.114(a)(2) of the Government Code, the CHRI is not subject to release to this requestor under section 411.114 and the submitted report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. To the extent either of the two named individuals fall within the scope of section 411.114(a)(2), the requestor is authorized to obtain CHRI from the department. Therefore, we must address the conflict between section 58.007 of the Family Code and section 411.114 of the Government Code.

Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). We find section 411.114 of the Government Code is the more specific statute in this instance. Section 411.114 gives one specific requestor, DFPS, access to particular information, CHRI, found in records involving particular individuals, those that fall within the purview of section 411.114(a)(2) of the Government Code. Conversely, section 58.007(c) prohibits any member of the public from obtaining any and all law enforcement records of any incident in which a juvenile is engaged in delinquent conduct or conduct indicating a need for supervision occurring on or after September 1, 1997. *See Gov't Code* § 411.114(a)(2); *Fam. Code* § 58.007. Thus, we conclude that section 411.114 is an exception to the confidentiality of section 58.007(c) for the CHRI it covers. Consequently, to the extent either of the two named individuals in the submitted report fall within the scope of section 411.114(a)(2), the department must release the CHRI, as defined by section 411.082(2), and withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. *See Open Records Decision No. 451 (1986)* (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

In summary, to the extent either of the two named individuals in the submitted report do not fall within the purview of section 411.114(a)(2) of the Government Code, the CHRI is not subject to release to this requestor under section 411.114 and the submitted report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. To the extent either of the two named individuals fall within the scope of section 411.114(a)(2), the department must release the CHRI, as defined by section 411.082(2), and withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 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.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 at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 354152

Enc. Submitted documents

cc: Requestor
(w/o enclosures)