



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 28, 2012

Ms. Natasha Brooks  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2012-04559

Dear Ms. Brooks:

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# 448936.

The Midland Police Department (the "department") received a request for all information pertaining to a named individual. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information other statutes make confidential. Prior to its repeal by the Seventy-fourth Legislature, section 51.14 provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591; *see also* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). Despite the repeal of section 51.14 of the Family Code, law enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential pursuant to section 51.14. Former section 51.14 provided in relevant part as follows:

(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 Code § 51.14(d) (repealed 1995).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* Fam. Code § 51.02(2). Case number 1993-1225001 pertains to an incident that occurred prior to January 1, 1996, and lists as an arrestee an individual who qualified as a “child” at the time of the offense. Further, the requestor does not fall within one of the categories in section 51.14(d) under which inspection of the records would be permitted. Upon review, therefore, we conclude case number 1993-1225001 is confidential under former section 51.14.

In this instance, however, the requestor may have a right of access to some of the information at issue under other provisions of law. Section 411.1285(a) of the Government Code provides, “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety] criminal history record information (“CHRI”) that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.”<sup>1</sup> *See* Gov’t Code § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Texas Department of Public Safety] [CHRI] maintained by the [Texas Department of Public Safety] that relates to another person is authorized to:

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<sup>1</sup>A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2).

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). We note CHRI is defined as “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 id.* § 411.082(2). Thus, the information at issue contains CHRI. However, a domestic relations office may receive CHRI only if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, when read together, sections 411.087 and 411.1285(a) of the Government Code may provide a domestic relations office a right of access to CHRI in the information at issue.

The requestor in this instance states, and provides documentation showing, she has been assigned by the Brazos County District Court to “conduct a [s]ocial [s]tudy in a custody case involving” the named individual. Therefore, the information at issue may relate to a person who is a party to a proceeding in which a domestic relations office is providing services permitted under chapter 203 of the Family Code, and the requestor may generally have a right of access to CHRI contained in case number 1993-1225001. Thus, if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must generally make available to the domestic relations office any CHRI. Accordingly, we must address the conflict between section 51.14 of the Family Code and sections 411.087 and 411.1285(a) 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* Gov't Code § 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). In this instance, while section 51.14 generally makes confidential juvenile law enforcement records pertaining to conduct occurring before January 1, 1996, section 411.1285(a) gives one specific entity, the domestic relations office, access to particular information, CHRI, in the specific situation where the CHRI is found in records involving an individual who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See* Fam. Code § 51.14, Gov't Code § 411.1285(a). Thus, we find the statutory right of access granted to a domestic relations office under section 411.1285 of the Government Code prevails over the more general confidentiality provision of section 51.14. We note although you also raise the doctrine of common-law privacy for the information at issue, the requestor's statutory right

of access prevails over the common law. See *Center Point Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *Collins v. Tex. Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Consequently, if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must release from case number 1993-1225001 information pertaining to the named individual that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and must withhold the remainder of case number 1993-1225001 under section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code. However, if the department determines the requestor is not with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must withhold case number 1993-1225001 in its entirety under section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code.

Next, we address your argument for any remaining requested information. Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to a named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains any additional law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

As previously noted, section 411.1285(a) of the Government Code allows a domestic relations office to obtain CHRI that relates to a person who is a party to a proceeding in

which the domestic relations office is providing services permitted under chapter 203 of the Family Code. Further, the requestor in this instance has been assigned by the Brazos County District Court to conduct a social study in a custody case involving the named individual. Thus, pursuant to section 411.1285(a), if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must release the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from all remaining requested documents depicting this individual as a possible suspect, arrestee, or criminal defendant. *See* ORD 451. In that instance, with the exception of CHRI, to the extent the department maintains any additional law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must withhold all remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor is not with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must withhold any additional law enforcement records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then pursuant to section 411.1285(a), the department must release from case number 1993-1225001, and from any remaining requested documents depicting this individual as a possible suspect, arrestee, or criminal defendant, information pertaining to the named individual that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. In that instance, the department must withhold the remainder of case number 1993-1225001 under section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code and must withhold any remaining information depicting the individual as a possible suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department determines the requestor is not with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must withhold case number 1993-1225001 in its entirety under section 552.101 of the Government Code in conjunction with section 51.14 of the Family Code and must withhold any additional law enforcement records depicting this individual as a possible suspect, arrestee, or criminal defendant in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 448936

Enc. Submitted documents

c: Requestor  
(w/o enclosures)