



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2014

Mr. Bryan McWilliams
Assistant City Attorney
Legal Department
City of Amarillo
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2014-08114

Dear Mr. McWilliams:

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# 522552.

The Amarillo Police Department (the "department") received a request for information relating to a specified incident.¹ 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 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 section 58.007 of the Family Code, which provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹We note the department received clarification from the requestor regarding his request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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 delinquent conduct or conduct indicating a need for supervision 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 section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). Upon review, we find the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. It does not appear any of the exceptions to confidentiality under section 58.007 apply to the information at issue. Accordingly, the submitted information is confidential under section 58.007(c) of the Family Code and must generally be withheld under section 552.101 of the Government Code.

However, we note the requestor is an investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114 of the Government Code states in pertinent part:

(a)(2) The [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:

...

(I) an alleged perpetrator in a report the [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(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)(I), (4)(B). 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). Thus, these provisions may grant the DFPS investigator a right of access to CHRI in the submitted information. In this case, the requestor states the information is being requested for the purpose of a Child Protective Services investigation but does not specifically state whether the named individual who is the subject of the submitted information is an alleged perpetrator in a DFPS report of abuse or neglect of a child. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the requested information, and we must rule conditionally. Therefore, if the requestor is not investigating the named individual at issue as an alleged perpetrator in a DFPS report of abuse or neglect of a child, the CHRI is not subject to release to this requestor under section 411.114, and the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, if the requestor is investigating the named individual at issue as an alleged perpetrator in a DFPS report of abuse or neglect of a child, then the requestor is authorized by section 411.114 of the Government Code to obtain CHRI from the department. In that instance, we must address the conflict between section 58.007(c) 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). In this instance, while section 58.007(c) generally makes juvenile law enforcement records confidential, section 411.114 of the Government Code gives one specific requestor, the DFPS, access to particular information, CHRI, found in records involving particular individuals, alleged perpetrators in a DFPS report of abuse or neglect of a child. *See Gov't Code* § 411.114; *Fam. Code* § 58.007. Thus, the statutory right of

access granted to the DFPS by section 411.114 of the Government Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Therefore, if the department determines the information the investigator is seeking relates to an alleged perpetrator in a DFPS report of abuse or neglect of a child, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The department must withhold the remaining information in the submitted report under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the department determines the information does not relate to such an individual, the department must withhold the submitted information in its entirety under section 552.101 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/som

Ref: ID# 522552

Enc. Submitted documents

c: Requestor
(w/o enclosures)