



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2014

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2014-11301

Dear Ms. Pemberton:

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# 527764 (Killeen ID# W013151).

The Killeen Police Department (the "department") received a request for a specified report. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, this information is generally confidential under section 261.201(a) of the Family Code. However, we note section 261.201(a) provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance.

In this instance, the requestor is a child support officer of the Office of the Attorney General, Child Support Division (the “OAG”). Section 411.1271(b-1) of the Government Code provides the following:

The [OAG] is entitled to obtain from the Department of Public Safety [(“DPS”)], the Federal Bureau of Investigation identification division, or another law enforcement agency criminal history record information maintained by [DPS] or [an] agency that relates to a person who owes child support in a Title IV-D case, as defined by Section 101.034, Family Code, for the purposes of locating that person and establishing, modifying, or enforcing a child support obligation against that person.

Gov’t Code § 411.1271(b-1). A Title IV-D case is an action in which services are provided by a Title IV-D agency “relating to the location of an absent parent, determination of parentage, or establishment, modification, or enforcement of a child support or medical support obligation.” Fam. Code § 101.034. The OAG is the State of Texas’s Title IV-D agency. *Id.* § 231.001. “Criminal history record information” (“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* Gov’t Code § 411.082(2). Thus, under section 411.1271(b-1), the OAG may have a right of access to CHRI contained in the department’s records.

The requestor states she is seeking the requested information to address an urgent issue. Thus, in this instance, we are unable to determine if the requestor is seeking the information at issue for the purposes of locating a person who owes child support and to establish,

modify, or enforce a child support obligation against that person in a Title IV-D case. If the department determines the requestor is seeking the information at issue for the purposes of locating a person who owes child support in a Title IV-D case and to establish, modify, or enforce a child support obligation against that person, then the requestor has a right of access to the CHRI pertaining to that person contained in the submitted information. Although you also raise section 552.108 of the Government Code for such information, a specific statutory right of access overcomes the general exceptions in the Act, such as section 552.108. *See* 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 department determines the requestor is seeking the information at issue for the purposes of locating a person who owes child support in a Title IV-D case and to establish, modify, or enforce a child support obligation against that person, the department must generally release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pertaining to that person. The remaining information, however, must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If, however, the department determines the requestor is not seeking the information at issue for the purposes of locating a person who owes child support in a Title IV-D case and to establish, modify, or enforce a child support obligation against that person, then the requestor does not have a right of access to the CHRI pertaining to that person in the submitted information, and the submitted information must be withheld in its entirety under section 552.101 in conjunction with section 261.201(a). *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized, and potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); Fam. Code § 261.201(b)-(g), (i), (k) (listing entities authorized to receive section 261.201 information).

To the extent the requestor has a right of access to the CHRI at issue pursuant to section 411.1271(b-1) of the Government Code, we address the department's argument under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. Section 552.101 of the Family Code also encompasses section 58.007(c) of the Family Code, which provides as follows:

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 under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). The submitted information involves juvenile delinquent conduct that occurred on or after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). Therefore, the information at issue 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, as previously noted, the requestor is a representative of the OAG. Thus, to the extent the requestor is seeking the information at issue for the purposes of locating a person who owes child support in a Title IV-D case and to establish, modify, or enforce a child support obligation against that person, section 411.1271 of the Government Code is applicable to the CHRI at issue. *See Gov’t Code* § 411.1271(b-1). Accordingly, the requestor in this instance is authorized to obtain CHRI from the department. Therefore, we must address the conflict between section 58.007(c) of the Family Code and section 411.1271(b-1) 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 general provision is later enactment and manifest intent is that general provision prevails); *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 411.1271(b-1) of the Government Code gives one specific requestor, the OAG, access to particular information, CHRI, found in records relating to persons who owe child support in Title IV-D cases for the purposes of establishing, modifying, or enforcing a child support obligation against that person. *See Gov’t Code* § 411.1271(b-1). Thus, the statutory right of access granted to the OAG by section 411.1271(b-1) of the Government Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Consequently, if the department determines the requestor is seeking the information at issue for the purposes of locating a person who owes child support in a Title IV-D case and to establish, modify, or enforce a child support obligation against that person, the department must release the CHRI pertaining to that person to the requestor pursuant to section 411.1271(b-1) of the Government Code.

In summary, if the department determines the requestor is seeking the information at issue for the purposes of locating a person who owes child support in a Title IV-D case and to establish, modify, or enforce a child support obligation against that person, then the department must release the CHRI pertaining to that person contained in the submitted information pursuant to section 411.1271(b-1) of the Government Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the requestor is not seeking the information at issue for the purposes of locating a person who owes child support in a Title IV-D case and to establish, modify, or enforce a child support obligation against that person, then the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 527764

Enc. Submitted documents

c: Requestor
(w/o enclosures)