



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2016

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2016-00604

Dear Mr. Gates:

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# 593760.

The Midland Police Department (the "department") received a request for all information pertaining to a named individual. The department states it has released some information pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2). The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.¹

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." *Id.* § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be

¹We note the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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 police report number 2009-017170030 was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Therefore, we determine this information is generally confidential pursuant to section 261.201(a) of the Family Code. However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law[.]” *Id.* § 261.201(a). We note section 58.007 of the Family Code constitutes applicable state law for purposes of section 261.201(a). Accordingly, we must address the applicability of section 58.007 to this report, as well as the remaining information in Exhibit B.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See id.* § 58.007(c). The relevant language of section 58.007 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

Id. § 58.007(c), (e). Upon review, we find the police reports in Exhibit B, including police report numbers 2009-017170030 and 120512026, involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007(c), “child” means person who is ten years of age or older and under seventeen years of age when conduct occurred), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Therefore, the reports in Exhibit B are generally confidential under section 58.007(c) of the Family Code. However, the requestor is a representative of the Probation Office of the United States District Court, Western District of Texas (the “probation office”). Section 58.007(e) of the Family Code gives a “criminal justice agency as . . . defined by Section 411.082, Government Code” a right of access to juvenile law enforcement records. *Id.* § 58.007(e). Section 411.082 of the Government Code defines a “criminal justice agency” as including “a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice[.]” Gov’t Code § 411.082(3)(A). We understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* The named individual was not a juvenile at the time of the conduct at issue in police report number 120512026. The requestor is not seeking information about the individuals named as juvenile suspects or offenders in this report, so as to implicate the access provided in section 58.007(e) of the Family Code. *See Fam. Code* § 58.007(e). Thus, the department must generally withhold police report number 120512026 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Nonetheless, the requestor generally has a right of access to the remaining reports in Exhibit B, including police report number 2009-07170030, under section 58.007(e) of the Family Code. We note a statutory right of access prevails over a claim under common-law privacy. *See 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); *see also CenterPoint 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). But, as discussed above, police report number 2009-07170030 is also subject to section 261.201(a) of the Family Code, and records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See Fam. Code* § 261.201(a). Section 58.007(e) is applicable state law allowing disclosure to the probation office. Therefore, the department must determine whether releasing police report number 2009-07170030 to the probation

office is consistent with the Family Code. Accordingly, if the department determines the probation office intends to use police report number 2009-07170030 for purposes consistent with the Family Code, then the department must release this report to the requestor pursuant to section 58.007(e) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). Conversely, if the department determines the probation office does not intend to use police report number 2009-07170030 for purposes consistent with the Family Code, then the department must withhold this report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Nevertheless, we must address the requestor's right of access to some of the information in police report number 120512026 under section 411.087(a)(2) of the Government Code. *See Gov't Code* § 411.087(a)(2).

Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Department of Public Safety (“DPS”)] any criminal history record information maintained by [DPS] about a person.” *Id.* § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS] criminal history record information maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). Criminal history record information 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.” *Id.* § 411.082(2). Police report number 120512026 contains criminal history record information about the named individual. However, a criminal justice agency that receives criminal history record information from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). As discussed above, the requestor represents a criminal justice agency, and we understand she is requesting the information at issue for a criminal justice purpose. Accordingly, under section 411.087(a)(2), the requestor has a right of access to the information concerning the named individual in police report number 120512026 that shows the type of allegation made

and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.

There is a conflict between the confidentiality provided to police report number 120512026 under section 58.007(c) of the Family Code, and the requestor's right of access to criminal history record information within this report under section 411.087(a)(2) 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). Although section 58.007(c) generally makes juvenile law enforcement records confidential, section 411.087(a)(2) of the Government Code gives specific types of requestors, criminal justice agencies, access to particular information, criminal history record information, for a criminal justice purpose. Thus, the statutory right of access to criminal history record information granted to this requestor by section 411.087(a)(2) of the Government Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Therefore, the department must release the information concerning the named individual in police report number 120512026 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remainder of report number 120512026 under section 58.007(c).

Next, we note the reports in Exhibit B to which the requestor has a right of access under section 58.007(e) of the Family Code, as well as some of the remaining documents at issue, contain motor vehicle record information, which we have marked. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release.² Gov't Code § 552.130. Accordingly, the marked motor vehicle record information is generally confidential under section 552.130 of the Government Code. Therefore, we must address the conflict between the access provided under section 58.007(e) of the Family Code and the confidentiality provided under section 552.130 of the Government Code. As previously stated, where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See id.* § 311.026. Section 58.007(e) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. Although a specific statutory right of access prevails over general exceptions to disclosure under the Act, section 552.130 has its own

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

access provisions and, thus, is not a general exception under the Act. Consequently, the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 58.007(e). Thus, the department must withhold the information we have marked under section 552.130 of the Government Code, notwithstanding the requestor's right of access to this information pursuant to section 58.007(e) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. 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. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The requestor asks for all information held by the department concerning a named individual. Therefore, to the extent the department maintains any remaining law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold them under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, police report numbers 110115021, 150411038, and 150926029 do not list the named individual as a suspect, arrestee, or criminal defendant. Thus, this information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See Gov't Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal

³The department represents, to extent it maintains any remaining law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, it will release criminal record history information within these documents pursuant to section 411.087(a)(2) of the Government Code. *See Gov't Code* § 411.087(a)(2)

justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.083(b)(1), .089. The information at issue contains a Federal Bureau of Investigation (“FBI”) number that constitutes CHRI generated by the FBI. Therefore, the department must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Indus. Found.*, 540 S.W.2d at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.⁴ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens and, thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Upon review, we find the public citizens’ dates of birth and some of the remaining information, which we have marked, in police report numbers 110115021, 150411038, and 150926029 satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the public citizens’ dates of birth and the information we have marked in police report numbers 110115021, 150411038, and 150926029 under section 552.101 of the Government Code in conjunction with common-law privacy.

To conclude, the department must withhold police report number 2009-07170030 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if the department determines the probation office does not intend to use this report for purposes consistent with the Family Code; however, the department must release this report in its entirety pursuant to section 58.007(e) if it determines the probation office intends to use this report for purposes consistent with the Family Code. The department must release the information concerning the named individual in police report number 120512026 that shows the type of allegation made and whether there

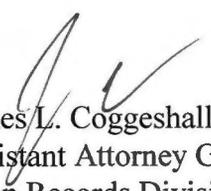
⁴Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.087(a)(2) of the Government Code; however, it must withhold the remaining information in this report under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must withhold the information we have marked under section 552.130 of the Government Code, but must release the remaining information in Exhibit B under section 58.007(e) of the Family Code.⁵ With the exception of the public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; and the information we have marked under section 552.130 of the Government Code, which the department must withhold, the department must release police report numbers 110115021, 150411038, and 150926029. To the extent the department maintains any remaining law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold them 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.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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

⁵Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 593760

Enc. Submitted documents

c: Requestor
(w/o enclosures)