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ATTORNEY GENERAL OF TEXAS

March 9, 2016

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-05473

Dear Ms. Honey:

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# 600984 (PIR No. W047938).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual, to include a specified incident report. 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.

Initially, we note the department seeks to withhold the dates of birth of public citizens. In Open Records Letter No. 2016-00620 (2016), this office issued a previous determination to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly, the department must withhold the dates of birth of public citizens in accordance with the previous determination issued in Open Records Letter No. 2016-00620.

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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] 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 report numbers 07-142235, 11-58387, and 12-2419 were used or developed in investigations of alleged child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Therefore, we determine the information at issue 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). Report numbers 07-142235 and 11-58387 are also subject to section 58.007 of the Family Code, which constitutes applicable state law for purposes of section 261.201(a). Further, some of the remaining information is also subject to section 58.007. Accordingly, we will address the applicability of section 58.007 to the information at issue.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. 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). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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). Upon review, we find report numbers 07-0142235, 10-21054, 10-39053, 10-66054, and 11-58387 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, this information is 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 for the Northern District of Texas (the “probation office”), and section 58.007(e) 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.* Therefore, the requestor generally has a right of access to report numbers 07-0142235, 10-21054, 10-39053, 10-66054, and 11-58387 under section 58.007(e) of the Family Code. Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for this information, we note a statutory right of access prevails over the common-law. *See 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); *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). Thus, the department may not withhold report numbers 07-0142235, 10-21054, 10-39053, 10-66054, and 11-58387 from this requestor under section 552.101 in conjunction with common-law privacy. However, as noted above, report numbers 07-0142235 and 11-58387 are also subject to section 261.201(a) of the Family Code. Records subject to section 261.201 may be disclosed 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. However, the department must determine whether releasing report numbers 07-0142235 and 11-58387 to the probation office is consistent with the Family Code. If the department determines the probation office does not intend to use report numbers 07-0142235 and 11-58387 for purposes consistent with the Family Code, then the department must withhold this information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) 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). However, if the department determines the probation office intends to use report numbers 07-0142235 and 11-58387 for purposes consistent with the Family Code, then the requestor has a right of access to this information pursuant to section 58.007(e) of the Family Code. In any event, the requestor has a right of access to report numbers 10-21054, 10-39053, and 10-66054 under section 58.007(e), and the department may not withhold this information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note, however, some of the information in report numbers 07-0142235, 10-21054, 10-39053, 10-66054, and 11-58387 consists of motor vehicle record information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Accordingly, the motor vehicle record information you have marked is generally excepted from disclosure under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right to inspect report numbers 10-21054, 10-39053, and 10-66054, and may have a right to inspect report numbers 07-0142235 and 11-58387, pursuant to section 58.007(e). 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. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *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, 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, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 58.007(e). Accordingly, in releasing report numbers 07-0142235, 10-21054, 10-39053, 10-66054, and 11-58387, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. Further, we note the specified incident report contains motor vehicle record information. Thus, the department also must withhold the motor vehicle record you have marked, in addition to the information we have marked, within the specified incident report under section 552.130 of the Government Code.

Section 552.101 of the Government Code also encompasses 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request, in part, seeks unspecified law enforcement records pertaining to a named individual. This portion of the 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 law enforcement records other than the reports we have already addressed 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. However, we note the requestor also seeks a specified incident report. This aspect of the request does not implicate the named individual's right to privacy, and the department may not withhold the specified incident report under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of the named individual's criminal history.

As noted above, the requestor is representative of the probation office and might have a right of access to some of this otherwise protected information, including report number 12-2419.

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.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain from the Texas Department of Public Safety (“DPS”) any criminal history record information (“CHRI”) maintained by the DPS about a person. *See* Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in part:

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

...

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

Id. § 411.087(a)(2). 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. As previously discussed, we understand the probation office is a criminal justice agency. *See id.* § 411.082(3)(A). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may receive such information only for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* ORD 655 (discussing limitations on release of CHRI). Thus, the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(a)(2).

We understand the information at issue will be used for criminal justice purposes because the requestor states the probation office is conducting an investigation of the individual named in the request. However, we are unable to determine whether the requestor intends to use report number 12-2419 information for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI in report number 12-2419 for purposes consistent with the Family Code, then the department must release the information from report number 12-2419 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for this information, we note a statutory right of access prevails over the common-law. *See Collins*, 297 S.W.3d at 415; *CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544. In that instance, the department

must withhold the remaining information in report number 12-2419 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the department must withhold report number 12-2419 in its entirety pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Further, to the extent the department maintains unspecified law enforcement records other than those we have already addressed listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI from those records that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544. The department must withhold any remaining unspecified law enforcement records other than those we have already addressed listing the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, we note the specified incident report contains information subject to common-law privacy. 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked within the specified incident report under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the dates of birth of public citizens in accordance with the previous determination issued in Open Records Letter No. 2016-00620. If the department determines the probation office does not intend to use report numbers 07-0142235 and 11-58387 for purposes consistent with the Family Code, then the department must withhold this information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the motor vehicle record information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. If the department determines the requestor intends to use the CHRI in report number 12-2419 for purposes consistent with the Family Code, then the department must release the CHRI from report number 12-2419. In that instance, the department must withhold the remaining

information in report number 12-2419 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the department must withhold report number 12-2419 in its entirety pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. To the extent the department maintains unspecified law enforcement records other than those we have already addressed listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI from those records. The department must withhold any remaining unspecified law enforcement records other than those we have already addressed listing the named individual as a suspect, arrested person, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked within the specified incident report under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.¹

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

¹We note the submitted information contains social security numbers. 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. *See* Gov't Code § 552.147(b).

Ref: ID# 600984

Enc. Submitted documents

c: Requestor
(w/o enclosures)