



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2016

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2016-19538

Dear Mr. Kopp:

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# 624330 (COSA File No. W127114).

The City of San Antonio (the "city") received a request for two specified incident reports. 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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which 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.

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). You state the information at issue involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, report numbers 2014-1208121 and 2015-0520546 are confidential under section 58.007(c) of the Family Code, and must generally be withheld in conjunction with section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which 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.

Id. § 261.201(a). You state report numbers 2014-1208121 and 2015-0520546 relate to investigations of alleged or suspected child abuse or neglect conducted by the city’s police department. *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), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Upon review, we find report number 2014-1208121 is subject to chapter 261 of the Family Code. We have no indication the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find report number 2014-1208121 is also confidential under section 261.201 of the Family Code and the report must generally be withheld in conjunction with section 552.101 of the

Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find the city has not demonstrated the remaining report was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. Accordingly, report number 2015-0520546 is not confidential under section 261.201(a) of the Family Code, and no portion of the report may be withheld on that basis.

However, we note the requestor is an investigator with the Office of the Federal Public Defender of the Western District of Texas (the “public defender’s office”). We further 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.” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1272 of the Government Code provides:

[A] public defender’s office [is] entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov’t Code § 411.1272. In addition, section 411.087(a) of the Government Code provides, in pertinent part, 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 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). 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).

Upon review, we find report numbers 2014-1208121 and 2015-0520546 contain CHRI. Thus, the requestor is authorized to obtain the CHRI from report number 2015-0520546 from the city pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender’s office is appointed. *Id.* § 411.087(a)(2), .1272. Furthermore, the requestor is authorized to obtain the CHRI from report number 2014-1208121 from the city pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender’s office is appointed and if release of the information is consistent with the Family Code. *Id.* § 411.087(a)(2), .1272; *see also* Fam. Code § 261.201(a).

Accordingly, we must address the conflict between section 58.007(c) of the Family Code and sections 411.087 and 411.1272 of the Government Code with regard to both reports. Where information falls within both general and specific statutory provisions, the specific provisions prevail over the general statutes. *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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Although section 58.007(c) generally makes juvenile law enforcement records confidential, section 411.1272 of the Government Code, in concert with section 411.087 of the Government Code, gives the public defender's office access to particular information in specific situations. *See* Gov't Code §§ 411.087, .1272. Thus, the statutory right of access granted to the public defender's office by sections 411.087 and 411.1272 of the Government Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code.

Therefore, the city must release CHRI from report number 2015-0520546 if it relates to a criminal case in which an attorney compensated by the public defender's office is appointed; the city must then withhold the remaining information in report number 2015-0520546 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Conversely, if the city determines report number 2015-0520546 does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, the city must withhold report number 2015-0520546 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Furthermore, if the city determines report number 2014-1208121 relates to a criminal case in which an attorney compensated by the public defender's office is appointed and release of the information is consistent with the Family Code, then the city must release CHRI from report number 2014-1208121 and withhold the remaining information in the report at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the city determines report number 2014-1208121 does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed or release would not be consistent with the Family Code, then the city must withhold report number 2014-1208121 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 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,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a stylized flourish at the end.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 624330

Enc. Submitted documents

c: Requestor
(w/o enclosures)