



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2016

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2016-21667

Dear Mr. Toulet:

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# 628187 (Midland ID #20042).

The Midland Police Department (the "department") received a request for a criminal history record information summary related to a named individual. 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. Section 552.101 of the Government Code encompasses section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Former section 51.14(d) was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided, in relevant part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). A “child” is defined as a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, however, we find the submitted information does not identify juvenile conduct occurring prior to January 1, 1996, for purposes of former section 51.14. Therefore, the department may not withhold the submitted information under section 552.101 in conjunction with former section 51.14.

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. *Id.* § 58.007(c). The relevant portion of section 58.007 provides:

(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). 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)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 conduct at issue. *See id.* § 51.02(2). Upon review, we find the information we have marked involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, the information we have marked is generally confidential pursuant to section 58.007(c) of the Family Code.

However, we note the requestor is a representative of the United States Probation Office for the 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.*; *see also* Crim. Proc. Code art 60.01(1) (defining “administration of criminal justice”). Therefore, the requestor has a right of access to case number 2009-10030004, which we marked under section 58.007(e) of the Family Code, and the department may not withhold this information from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Accordingly, the department must generally release case number 2009-10030004 to this requestor pursuant to section 58.007(e) of the Family Code.

We note the named individual is not a child for the purposes of section 58.007(c) in case number 2002-09140059 and case number 2009-09280049. *See* Fam. Code. § 51.02(2). Thus, the requestor does not have a right of access to case numbers 2002-09140059 and 2009-09280049 under section 58.007(e) of the Family Code. However, case numbers 2002-09140059 and 2009-09280049 contain the criminal history record information (“CHRI”) of the individual named in the request. 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 [CHRI] maintained by the [DPS] about a person.” *See* Gov’t Code § 411.089(a). 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 the [DPS CHRI] maintained by the [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.” *Id.* § 411.082(2). Thus, the information at issue contains CHRI. As previously noted, the requestor is a representative of the probation office, a criminal justice agency as defined by section 411.082 of the Government Code. *Id.* § 411.082(3)(A). A criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) of the Government Code may receive such information only for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b). We understand the requestor intends to use the CHRI for a criminal justice purpose. Thus, pursuant to section 411.087(a)(2), the requestor generally has a right of access to 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 from case numbers 2002-09140059 and 2009-09280049. Accordingly, there is a conflict between the confidentiality provided by section 58.007(c) of the Family Code and the requestor’s right of access to the named individual’s CHRI in case numbers 2002-09140059 and 2009-09280049 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 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, 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, CHRI, for a criminal justice purpose. Thus, the statutory right of access granted to a criminal justice agency 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, notwithstanding section 58.007(c), the department must make available to this requestor information within case numbers 2002-09140059 and 2009-09280049 that shows the types of allegations 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 remaining information within case numbers 2002-09140059 and 2009-09280049 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note case number 2009-10030004 contains 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 in case number 2009-10030004 is generally excepted from disclosure under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right of access to case number 2009-10030004 pursuant to section 58.007(e) of the Family 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. 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*, 521 S.W.2d at 277 (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 case number 2009-10030004 pursuant to section 58.007(e), the department must withhold the motor vehicle record information we have marked under section 552.130.

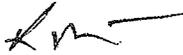
In summary, with respect to case numbers 2002-09140059 and 2009-09280049, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, to this requestor pursuant to sections 411.087(a)(2) and 411.089(a) of the Government Code and must withhold the remaining information in the reports under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department generally must release case number 2009-10030004 pursuant to section 58.007(e) of the Family Code; however, in releasing such information, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.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.

¹We note the requestor has a special right of access to the information being released in this instance. *See* Fam. Code § 58.007(e). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 628187

Enc. Submitted documents

c: Requestor
(w/o enclosures)