



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2016

Mr. Guillermo Trevino
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2016-21768

Dear Mr. Trevino:

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# 627834 (PIR# W053321).

The Fort Worth Police Department (the "department") received a request for five specified offense reports pertaining to a named individual. You state you have released some of the requested information. 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 encompasses information protected by other statutes, including section 261.201 of the Family Code. Section 261.201(a) provides as follows:

[T]he 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 the submitted information in Exhibit C-1 was used or developed in an investigation by the department under chapter 261, so as to fall within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we find the submitted information in Exhibit C-1 is generally confidential pursuant to section 261.201(a) of the Family Code.

However, we note the requestor is a representative of the Probation and Pretrial Services Office of the United States District Court, Northern District of Texas (the “probation office”). 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). 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). 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.* Thus, the requested information may contain CHRI. However, a criminal justice agency that receives CHRI 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).

We understand the requestor represents a criminal justice agency and intends to use the CHRI for a criminal justice purpose. 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 purposes consistent with the Family Code. *See* Gov't Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a). However, we are unable to determine whether the requestor intends to use the CHRI of the named individual within the submitted information in Exhibit C-1 for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI in the submitted information in Exhibit C-1 for purposes consistent with the Family Code, then the department must release the information at issue that is otherwise subject to section 261.201 of the Family Code and that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the department must withhold the remaining information in Exhibit C-1 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 does not intend to use the CHRI for purposes consistent with the Family Code, then the department must withhold the submitted information in Exhibit C-1 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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.

Fam. Code § 58.007(c). 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 the submitted information in Exhibit C-2 involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c).

We note the Exhibit C-2 lists the named individual as a suspect who was nineteen years old at the time of the conduct. Although the requestor is a representative of the probation office, he is seeking information about the adult arrestee and not the child arrestee identified in the submitted information. Thus, we conclude the requestor does not have a right of access to the information at issue under section 58.007(e) of the Family Code. *See id.* § 58.007(e) (providing “[l]aw enforcement records and files concerning a child may be inspected or copied by . . . a criminal justice agency as that term is defined by Section 411.082, Government Code[.]”). Therefore, as the department states none of the exceptions to section 58.007 apply in this instance, the submitted information in Exhibit C-2 is generally confidential under section 58.007 of the Family Code. However, the requestor may have a right of access to some of the information at issue under section 411.087(a)(2) of the Government Code. *See Gov’t Code* § 411.087(a)(2).

As noted above, we understand the probation office is a criminal justice agency and intends to use the CHRI for a criminal justice purpose. Thus, the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code. Consequently, pursuant to section 411.087(a)(2), the department must generally make available to the requestor information in Exhibit C-2 pertaining to the named individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and must withhold the remaining information in Exhibit C-2 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Thus, there is a conflict between the confidentiality provided by section 58.007(c) of the Family Code and the requestor’s right of access 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). In this instance, although section 58.007(c) of the Family Code 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 the 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, notwithstanding section 58.007(c), the department must make available to this requestor information pertaining to the named

individual that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from the submitted information in Exhibit C-2 pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information in Exhibit C-2 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, if the department determines that release of the CHRI in Exhibit C-1 is consistent with the Family Code, then the CHRI in Exhibit C-1 must be released, but the department must withhold the remaining information in Exhibit C-1 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the department determines that release of the CHRI in Exhibit C-1 is not consistent with the purposes of the Family Code, then the department must withhold Exhibit C-1 in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. The department must release the CHRI in Exhibit C-2 relating to the named individual and withhold the remaining information in Exhibit C-2 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family 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.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

¹Should the department receive another request for these same records from a person who does not have a right of access to the information, the department should resubmit this same information and request another ruling from this office. See Gov't Code § 552.301(a).

Ref: ID# 627834

Enc. Submitted documents

c: Requestor
(w/o enclosures)