



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 17, 2016

Mr. Stephen D. Gates  
First Assistant City Attorney  
City Attorney's Office  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702

OR2016-23234

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# 630696 (ID# 20317).

The Midland Police Department (the "department") received a request for a criminal history record information ("CHRI") summary related to a named individual. You state the department has released some information to the requestor. 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. You claim some of the submitted information is confidential pursuant to section 58.007(c) of the Family Code, which applies to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. However, we note section 58.007 is inapplicable in this instance because the conduct at issue occurred in 1995. Accordingly, we will address the applicability of former section 51.14 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 was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Exhibit C pertains to an incident that occurred prior to January 1, 1996, and one of the listed suspects was ten years of age or older and under seventeen years of age at the time of the offense. Further, the requestor does not fall within one of the categories in former section 51.14(d) under which inspection of the records would be permitted. Accordingly, Exhibit C is generally confidential under former section 51.14(d) of the Family Code.

However, the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Western District of Texas (the “probation office”) and may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides that “[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). 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). Thus, the information at issue contains 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 CHRI).

Section 411.082 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). “Administration of criminal justice” has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI].” Code Crim. Proc. art. 60.01(1). We understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* Although it appears the probation office is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the department determines the requestor does not intend to use CHRI for a criminal justice purpose, the department must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. However, if the department determines the requestor intends to use the CHRI for a criminal justice purpose, then, pursuant to section 411.087(a)(2), the department must generally make available to the requestor 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, and must withhold the remainder of Exhibit C under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. In that instance, there is a conflict between the confidentiality provided by former section 51.14(d) 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 former section 51.14(d) 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 former section 51.14(d) of the Family Code. Therefore, notwithstanding former section 51.14(d), if the department determines the requestor intends to use the CHRI for a criminal justice purpose, then the department must make available to this requestor 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 from Exhibit C pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family 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.

Fam. Code § 261.201(a). You state Exhibit B relates to an investigation of alleged or suspected child abuse or neglect conducted by the 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the 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 conclude Exhibit B is generally confidential pursuant to section 261.201 of the Family Code.

However, as noted above, the requestor is a representative of the probation office and may have a right of access to CHRI pursuant to section 411.087(a)(2) of the Government Code. Section 261.201(a) provides 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). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Exhibit B contains CHRI. *See* Gov’t Code § 411.082(2). Although we understand the probation office is engaged in the administration of criminal justice under chapter 411, we cannot determine whether she intends to use the CHRI for a criminal justice purpose or for purposes consistent with the Family Code. *See id.* §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a). Consequently, if the department determines the requestor intends to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the department must release CHRI from Exhibit B, which is otherwise subject to section 261.201 of the Family Code, pursuant to section 411.087(a)(2) of the Government Code and must withhold the remaining information in Exhibit B 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 a criminal justice purpose or for purposes consistent with the Family Code, then the department must withhold Exhibit B in its entirety pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

In summary, if the department determines the requestor intends to use the CHRI from Exhibit C for a criminal justice purpose, then the department must make CHRI available to this requestor from Exhibit C pursuant to section 411.087(a)(2) of the Government Code and must withhold the remaining information in Exhibit C under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. However, if the department determines the requestor does not intend to use the CHRI at issue for a criminal justice purpose, the department must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. If the department determines the requestor intends to use the CHRI from Exhibit B for a criminal justice purpose and for purposes consistent with the Family Code, then the department must release CHRI from Exhibit B pursuant to section 411.087(a)(2) of the Government Code and must withhold the remainder of Exhibit B 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 at issue for a criminal justice purpose or for purposes consistent with the Family Code, then the department must withhold Exhibit B in its entirety pursuant to 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](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 "Matthew Taylor", with a long horizontal flourish extending to the right.

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/som

Ref: ID# 630696

Enc. Submitted documents

c: Requestor  
(w/o enclosures)