KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2016

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

OR2016-24384

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# 632799 (PIR No. W054363).

The Fort Worth Police Department (the "department") received a request for three specified police reports involving a named individual. You state you have released some 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses 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:
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> (1) a juvenile court having the child before it in any proceeding;
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> (2) an attorney for a party to the proceeding; and
>
> (3) law-enforcement officers when necessary for the discharge of their official duties.

Id. § 51.14 (repealed 1995).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 two of the listed suspects were 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.

We note the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Northern 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 "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information maintained by the department 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 [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:
>
> . . .
>
> (2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). We note "criminal history record information" 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 criminal history record information. Nevertheless, a criminal justice agency that receives criminal history record information 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).

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). "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, detention, 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 criminal history record information." Crim. Proc. Code art. 60.01(1). We understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov't Code § 411.082(3)(A).

The probation office states it is investigating a named individual. Upon review, we find the requestor is engaged in the administration of criminal justice under chapter 411 and intends to use the record at issue for a criminal justice purpose. Accordingly, pursuant to section 411.087(a)(2), the department must generally make available to the requestor information 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. However, we find 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 an exception to the 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), 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 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.

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 632799

Enc. Submitted documents

c: Requestor
(w/o enclosures)