



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2015

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

OR2015-13537

Dear Ms. 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# 569923 (PIR No. W042001).

The Fort Worth Police Department (the "department") received a request for all reports for a named individual, including a specified report. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after

¹Although you do not raise sections 552.130 and 552.147 of the Government Code in your brief, we understand you to assert these exceptions based on your markings.

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.

...

(c) 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.

Fam. Code § 58.007(c), (e). 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(a), (b) (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 offense report numbers 03084453, 03122431, 04044192, 04046110, 04066069, and 99635249 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, this information is subject to section 58.007(c) of the Family Code. Although you also claim report number 05035998 is subject to section 58.007, this report does not pertain to a juvenile suspect or offender between the ages of ten and sixteen. Thus, the department may not withhold report number 05035998 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Report numbers 03122431 and 04046110 involve child suspects who are not the individual named in the request. The department states none of the exceptions to section 58.007 apply in this instance. Accordingly, the department must withhold report numbers 03122431 and 04046110 in their entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, section 58.007(e) of the Family Code provides, “[l]aw 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 [of the Family Code] [or] a criminal justice agency as that term is defined by Section 411.082, Government Code[.]” *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).

In this instance, the requestor is a probation officer with the Federal Probation System of the United States District Court (the “probation office”). We understand the probation office is a criminal justice agency for purposes of section 58.007(e). Accordingly, the requestor has a right to inspect offense report numbers 03084453, 04044192, 04066069, and 99635249 under section 58.007(e) of the Family Code, and these reports may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Although you claim some of the information at issue is excepted under section 552.147 of the Government Code, a specific statutory right of access prevails over section 552.147. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome Act’s general exceptions to disclosure). Therefore, none of report number 04066069 may be withheld from this requestor under section 552.147 of the Government Code.

We note you seek to withhold a portion of report number 03084453 under 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 you have marked in report number 03084453 must generally be withheld under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right to inspect the submitted information pursuant to section 58.007(e) of the Family Code. 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. 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 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, section 58.007(e) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. 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 report number 03084453 to the requestor, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

We note report number 99635249, as well as report number 05035998, are subject to section 261.201(a) of the Family Code. Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides:

(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). Upon review, we find report numbers 05035998 and 99635249 were used or developed in investigations of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Therefore, we find these reports are within the scope of section 261.201 of the 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 report numbers 05035998 and 4635249 are generally confidential pursuant to section 261.201 of the Family Code. However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

As noted above, report number 99635249 is subject to section 58.007(e). Section 58.007(e) is applicable state law allowing disclosure to the probation office. However, the department must determine whether releasing the information at issue to the probation office is consistent with the Family Code. If the department determines the probation office does not intend to use the information at issue for purposes consistent with the Family Code, then the department must withhold report number 99635249 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(b)-(g), (k), (1) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute). However, if the department determines the probation office intends to use this report for purposes consistent with the Family Code, then the requestor has a right of access to report number 99635249 pursuant to section 58.007(e) of the Family Code.

We note chapter 411 of the Government Code also constitutes “applicable state law” in this instance. 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 [“CHRI”] maintained by the [Department of Public Safety] about a person.” Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] [CHRI] 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 [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). Report number 05035998 contains CHRI about the individual named in the request. 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* ORD 655.

In this instance, the requestor represents a “criminal justice agency.” Thus, she is authorized to obtain CHRI in report number 05035998 concerning the named individual pursuant to section 411.087(a)(2), but only for a criminal justice purpose and for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a). The requestor states she is requesting the information for a criminal justice purpose. Accordingly, if the department determines the requestor intends to use the CHRI in report number 05035998 for purposes consistent with the Family Code, then pursuant to

section 411.087(a)(2) of the Government Code, the department must release 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, but must withhold the remainder of this report 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 purposes consistent with the Family Code, then the department must withhold report number 05035998 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

In summary, report numbers 03122431 and 04046110 must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The department must release report numbers 03084453, 04044192, and 04066069 to this requestor pursuant to section 58.007(e) of the Family Code. However, the department must withhold the motor vehicle record information you have marked in report number 03084453 pursuant to section 552.130 of the Government Code. The department must withhold report number 99635249 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code if the department determines the probation office does not intend to use the information at issue for purposes consistent with the Family Code. However, the department must release report number 99635249 pursuant to section 58.007(e) if it determines the probation office intends to use this report for purposes consistent with the Family Code. If the department determines the requestor intends to use the CHRI in report number 05035998 for purposes consistent with the Family Code, then the department must release the information at issue that is otherwise subject to section 261.201 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 this report 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 purposes consistent with the Family Code, then the department must withhold report number 05035998 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

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

² As our ruling is dispositive, we need not address your remaining argument.

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 cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 569923

Enc. Submitted documents

c: Requestor
(w/o enclosures)