



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2015

Ms. Teresa J. Brown
Senior Open Records Assistant
City of Plano
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-20160

Dear Ms. Brown:

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# 580843 (Plano Reference No. MCKM070615).

The Plano Police Department (the "department") received a request for information pertaining to a named individual. You state you have 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 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, which 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.

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(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). Report number 2007-00089038 involves a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, this reports is subject to section 58.007 of the Family Code.

Although the requestor is a representative of the Probation and Pretrial Services Office of the United States District Court for the Eastern District of Texas (the “probation office”), she is seeking information about the adult suspect and not the child suspect identified in report number 2007-00089038. Thus, we conclude she does not have a right of access to this report under section 58.007 of the Family Code. *See* Fam. Code § 58.007(e) (providing “[I]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[.]”). Accordingly, report number 2007-00089038 is generally confidential under section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 of the Family Code 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 assert the remaining information 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. Thus, we find the remaining information is generally confidential pursuant to section 261.201(a) of the Family Code. However, 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).

We note chapter 411 of the Government Code constitutes “applicable state law” in this instance. As stated above, the requestor is a representative of the probation office. Thus, the requestor 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 [Texas Department of Public Safety (the “DPS”)] any criminal history record information [“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:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter 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.

Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337 - 4338 (Vernon) (to be codified as an amendment to Gov’t Code § 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 Gov’t Code* § 411.082(2). Thus, report number 2007-00089038 and the remaining information contain 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), Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337 - 4338 (Vernon) (to be codified as an amendment to Gov't Code § 411.087(b)); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

A "criminal justice agency" is defined in part as "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 of the Code of Criminal Procedure 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 [CHRI]." Crim. Proc. Code art. 60.01(1).

We note the requestor is a representative of a criminal justice agency and intends to use the information for a criminal justice purpose. Therefore, in regards to report number 2007-00089038, 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 the information at issue under section 552.101 of the Government Code in conjunction with section 58.007 of the Family 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 provisions of section 58.007(c) of the Family Code. Therefore, notwithstanding section 58.007(c), 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 report number 2007-00089038 pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information in the report at issue under

section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We also note the requestor, as a representative of the probation office, may have a right of access to some of the remaining information, which is subject to section 261.201 of the Family Code. Although the requestor is a representative of a criminal justice agency and intends to use the information for a criminal justice purpose, we are unable to determine whether the release of the information in this instance would be for purposes consistent with the Family Code. Accordingly, we must rule conditionally. If the department determines the release of the CHRI is for purposes consistent with the Family Code, we conclude the department must make available to the requestor any CHRI from the submitted 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. In that event, the department must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines the release of the CHRI is not consistent with the Family Code, then the department must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, in regards to report number 2007-00089038, 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 report at issue pursuant to section 411.087(a)(2) of the Government Code, and withhold the remaining information in the report at issue under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. In regards to the remaining information, if the department determines the release of the CHRI is for purposes consistent with the Family Code, we conclude the department must make available to the requestor any CHRI from the remaining 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. In that event, the department must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines the release of the CHRI is not consistent with the Family Code, then the department must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 580843

Enc. Submitted documents

c: Requestor
(w/o enclosures)