



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2016

Mr. Grant Jordan
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-02513

Dear Mr. Jordan:

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# 596407 (City of Fort Worth PIR No. W047190).

The Fort Worth Police Department (the "department") received two requests from the same requestor for information pertaining to three specified offenses involving a named individual. 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.

Initially, we note the department has not submitted information pertaining to the offense specified in the first request. We assume, to the extent any information responsive to the first request existed on the date the department received the request, the department has released it. If the department has not released any such information, it must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).*

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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c). *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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 conduct at issue. *See id.* § 51.02(2). Upon review, we find report numbers 12-37141 and 12-32763 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). The exceptions in section 58.007 do not apply in this instance.¹ *See id.* § 58.007(e)-(i). Accordingly, the department must generally withhold report numbers 12-37141 and 12-32763 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, the requestor is a representative of the Federal Probation and Pretrial Office of the United States District Court (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]

¹We note the requestor is seeking information about an individual who is listed as an adult suspect in report numbers 12-37141 and 12-32763. The requestor is not seeking information about the individuals named as juvenile suspects or offenders in the reports, so as to implicate the access provided in section 58.007(e) of the Family Code. *See* Fam. Code § 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[.]”).

criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any criminal history record information [(“CHRI”)] maintained by DPS 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 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). 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). The submitted reports 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), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, if the requestor represents a “criminal justice agency,” she is authorized to obtain CHRI in the submitted reports concerning the named individual from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov’t Code §§ 411.083(c), .087(b).

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[.]” *Id.* § 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 conclude the probation office is engaged in the administration of criminal justice for purposes of chapter 411. We understand the requestor is requesting the information at issue for a criminal justice purpose because the requestor states the named individual is under investigation by the probation office. Accordingly, under section 411.087(a)(2), the requestor has a right of access to information concerning the named individual in the

submitted reports that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The remaining information is confidential under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Based on these conclusions, we find there is a conflict between the confidentiality provided to report numbers 12-37141 and 12-32763 by section 58.007(c) of the Family Code and the right of access to CHRI provided to this requestor 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). Although section 58.007(c) generally makes juvenile law enforcement records confidential, section 411.087(a)(2) gives specific types of requestors, criminal justice agencies, access to particular information, CHRI, for a criminal justice purpose. Thus, the statutory right of access to CHRI granted to this requestor by section 411.087(a)(2) prevails over the more general confidentiality provision of section 58.007(c). 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 the information in report numbers 12-37141 and 12-32763 pursuant to section 411.087(a)(2). The department must generally withhold the remaining information in report numbers 12-37141 and 12-32763 under section 552.101 in conjunction with section 58.007(c).

However, you also assert the CHRI within the submitted reports is subject to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Because the release provision of section 261.201 is more restrictive, we must also address its applicability to the reports. Section 552.101 also encompasses section 261.201(a), which provides:

(a) Except as provided by Section 261.203, the 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, however, we find the department has not established report number 12-32763 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. *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). Therefore, report number 12-32763 is not confidential under section 261.201 and the department may not withhold it under section 552.101 on that ground. We find report number 12-37141 was used or developed in an investigation of alleged child abuse. Therefore, we determine the CHRI to which the requestor has access in report number 12-37141 is also generally confidential pursuant to section 261.201(a) of the Family Code.

We note section 261.201(a) of the Family Code 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). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Accordingly, if the department determines the requestor intends to use the CHRI in report number 12-37141 for purposes consistent with the Family Code, then pursuant to section 411.087(a)(2) of the Government Code, the requestor generally has a right of access to information in report number 12-37141 concerning the named individual 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. 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 CHRI in report number 12-37141 under section 552.101 of the Government Code in conjunction with section 261.201(a).

In summary, 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 the information in report numbers 12-37141 and 12-32763 pursuant to section 411.087(a)(2) of the Government Code. However, if the department determines the requestor does not intend to use the CHRI in report number 12-37141 for purposes consistent with the Family Code, then the department must withhold the CHRI in report number 12-37141 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the remaining information in report numbers 12-37141 and 12-32763 under section 552.101 in conjunction with section 58.007(c) of the Government 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 that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 596407

Enc. Submitted documents

c: Requestor
(w/o enclosures)