



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2016

Ms. Josi Diaz
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2016-02944

Dear Ms. Diaz:

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# 597194 (ORR# 2015-18865).

The Dallas Police Department (the "department") received a request for all police records for two named individuals.¹ 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. Section 552.101 of the Government Code encompasses section 58.106 of the Family Code. You claim the submitted information is made confidential by section 58.106. However, subchapter B of chapter 58 of the Family Code, which contains

¹We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (d), (e). Nonetheless, section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .301, .302, .352. Accordingly, we will consider your argument under section 552.101 of the Government Code.

section 58.106, pertains to the administration of the juvenile justice information system by the Texas Department of Public Safety. *See* Fam. Code § 58.102. Because the submitted information was not requested from the Texas Department of Public Safety, we conclude section 58.106 of the Family Code is not applicable in this instance. Thus, the submitted information is not confidential under section 58.106 and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law[.]

Id. § 261.201(a), (k), (l)(2). Upon review, we find the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation 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 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 section 261.201 of the Family Code. However, in this instance, the requestor is the authorized representative of the child victim listed in the information, who is now an adult. Thus, pursuant to section 261.201(k), the department may not withhold the submitted information from this requestor under section 552.101 of the Government Code on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2).

Section 552.101 of the Government Code also encompasses section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14 provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591; *see also* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports that identify juvenile suspects or furnish basis for their identification). Despite the repeal of section 51.14 of the Family Code, law enforcement records pertaining to juvenile conduct that occurred prior to the effective date of the repeal continue to be confidential pursuant to section 51.14. Former section 51.14 provided in relevant part as follows:

(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(d) (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* Fam. Code § 51.02(2). The submitted information pertains to an incident that occurred prior to January 1, 1996, and lists as an arrestee an individual who qualified as a “child” at the time of the offense. Further, the requestor does not fall within one of the categories in section 51.14(d) under which inspection of the records would be permitted. Upon review, therefore, we conclude the submitted information is confidential under former section 51.14.

In this instance, however, the requestor may have a right of access to some of the information at issue under other provisions of law. Section 411.1285(a) of the Government Code provides, “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety] criminal history record information (“CHRI”) that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.”² *See* Gov’t Code § 411.1285(a); *see also* Fam. Code ch. 203 (governing administration of domestic relations offices). 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 [Texas Department of Public Safety] [CHRI] maintained by the [Texas 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.

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 id.* § 411.082(2). Thus, the information at issue contains CHRI. However, a domestic relations office may receive CHRI only if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, when read together, sections 411.087 and 411.1285(a) of the Government Code may provide a domestic relations office a right of access to CHRI in the information at issue.

²A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2).

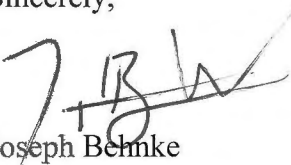
The requestor in this instance states, and provides documentation showing, she has been assigned by the Dallas County Family District Courts to “complete a court ordered social study” related to the named individuals. Therefore, the information at issue may relate to a person who is a party to a proceeding in which a domestic relations office is providing services permitted under chapter 203 of the Family Code, and the requestor may generally have a right of access to CHRI contained in the submitted information. Thus, if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must generally make available to the domestic relations office any CHRI. Accordingly, we must address the conflict between former section 51.14 of the Family Code and sections 411.087 and 411.1285(a) 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 generally makes confidential juvenile law enforcement records pertaining to conduct occurring before January 1, 1996, section 411.1285(a) gives one specific entity, the domestic relations office, access to particular information, CHRI, in the specific situation where the CHRI is found in records involving an individual who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See* Fam. Code § 51.14, Gov’t Code § 411.1285(a). Thus, we find the statutory right of access granted to a domestic relations office under section 411.1285 of the Government Code prevails over the more general confidentiality provision of former section 51.14. Consequently, if the department determines the requestor is with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must release from the submitted information the information pertaining to the named individual that shows identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions, and must withhold the remainder of the submitted information 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 is not with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203 of the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14 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 "J. Behnke", with a stylized flourish at the end.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 597194

Enc. Submitted documents

c: Requestor
(w/o enclosures)