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ATTORNEY GENERAL OF TEXAS

May 17, 2016

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OR2016-11321

Dear Mr. Gates

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# 610957 (ID# 18982).

The Midland Police Department (the "department") received a request for reports of any contacts or arrests of a named individual. The department states it has released some information and claims the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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. This section encompasses section 261.201(a) of the Family Code, 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, we find Exhibit D, case numbers 2007-01200004 and 2007-02240047 in Exhibit B, and case number 2003-05250035 in Exhibit C were used or developed in investigations of alleged child abuse or neglect. *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, we determine this information is generally confidential pursuant to section 261.201(a) of the Family Code. The department must withhold the 2005 and 2006 reports in Exhibit D pursuant to section 552.101 of the Government Code and 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). Case number 2003-05250035 is also subject to section 58.007 of the Family Code, which constitutes applicable state law for purposes of section 261.201(a). Further, except for case number 2004-12250011, the remaining information in Exhibit C is also subject to section 58.007. Accordingly, we will address the applicability of section 58.007 to this information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after 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.

...

(e) 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.

Id. § 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 (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 case number 2004-12250011 does not involve a child offender as defined by section 51.02. Thus, the department may not withhold case number 2004-12250011 under section 58.007 of the Family Code. However, case number 2003-05250035 and the rest of Exhibit C involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, this information is generally confidential under section 58.007(c) of the Family Code.

However, the requestor is a representative of the Probation Office of the United States District Court for the Western District of Texas (the "probation office"), and section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code" a right of access to juvenile law enforcement records. *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). We understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* Therefore, the requestor generally has a right of access to the information under section 58.007(e) of the Family Code. However, as noted above, case number 2003-05250035 is also subject to section 261.201(a) of the Family Code. Records subject to section 261.201 may be disclosed under applicable state law and for purposes consistent with the Family Code. *See Fam. Code* § 261.201(a). Section 58.007(e) is applicable state law allowing disclosure to the probation office. However, the department must determine whether releasing case number 2003-05250035 to the probation office is consistent with the Family Code. If the department determines the probation office does not intend to use case number 2003-05250035 for purposes consistent with the Family Code, then the department must withhold this information 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), (l) (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 case number 2003-05250035 for purposes consistent with the Family Code, then the requestor has a right of access to this information pursuant to section 58.007(e) of the Family Code. In any event, except for case number 2004-12250011, the requestor has a right of access to the remaining information in

Exhibit C under section 58.007(e), and the department may not withhold this information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note, however, some of the information in Exhibit C contains motor vehicle record information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a driver's license or motor vehicle title or registration 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 in case numbers 2003-05250035, 2003-06160059, 2004-12250015, and 2005-06080037 is confidential under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right to inspect the information pursuant to section 58.007(e). 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. 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. 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 case numbers 2003-05250035, 2003-06160059, 2004-12250015, and 2005-06080037 to the requestor, the department must withhold the motor vehicle record information under section 552.130 of the Government Code.

Next, we consider the requestor's access to the reports that are subject to section 261.201 only. As noted above, section 261.201(a) provides that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes "applicable state law" in this instance. Section 411.089(a) of the Government Code provides that "[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety ("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 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 [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.

Id. § 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 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 CHRI). Thus, to the extent the requestor in this instance represents a “criminal justice agency,” she is authorized to obtain CHRI from Exhibit C 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).

Section 411.082 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.” *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, 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).*

The department acknowledges the requestor is a representative of a criminal justice agency and intends to use the information for criminal justice purposes. However, we are unable to determine whether the requestor intends to use case numbers 2007-01200004 and 2007-02240047 in Exhibit B and case number 2007-04240047 in Exhibit D for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then 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. In that instance, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Although the department raises common-law privacy for the reports in Exhibit B, a statutory right of access prevails over the common-law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls

and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). If the department determines the requestor does not intend to use the reports for purposes consistent with the Family Code, then the department must withhold these three reports in their entirety pursuant to section 552.101 in conjunction with section 261.201(a). *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

The department contends Exhibit B is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses common-law privacy, which protects information that 1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and 2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks reports of any contacts or arrests concerning a named individual. Thus, the request requires the department to compile law enforcement records concerning the individual named in the request and implicates the named individual's right to privacy. To the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department states it has released information to the requestor pursuant to section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2).

Lastly, we will address case number 2004-1250011 in Exhibit C, which we concluded is not confidential under section 58.007 of the Family Code. This report contains dates of birth, which are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.* 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's

rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.¹ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the department must withhold all public citizens' dates of birth in case number 2004-1250011 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information related to a driver's license or motor vehicle registration or title. *See* Gov't Code § 552.130. Thus, the department must withhold the motor vehicle record information in case number 2004-1250011 under section 552.130.

In summary, the department must withhold the 2005 and 2006 reports in Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the probation office intends to use case numbers 2007-01200004 and 2007-02240047 in Exhibit B and case number 2007-04240047 in Exhibit D for purposes consistent with the Family Code, then the department must release the CHRI and withhold the remainder under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Otherwise, the department must withhold these three reports in their 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 intends to use case number 2003-05250035 for purposes consistent with the Family Code, then the department must release it to the requestor pursuant to section 58.007(e) of the Family Code. Otherwise, the department must withhold case number 2003-05250035 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Except for case number 2004-12250011, the department must release the rest of Exhibit C to the requestor pursuant to section 58.007(e) of the Family Code. However, in releasing case numbers 2003-05250035, 2003-06160059, 2004-12250015, and 2005-06080037 to the requestor, the department must withhold the motor vehicle record information under section 552.130 of the Government Code. To the extent the department maintains law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the department must withhold the information under section 552.101 of the Government Code in conjunction with common-law privacy. As for case number 2004-12250011, the department

¹Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

must withhold all public citizens' dates of birth pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and motor vehicle record information pursuant to section 552.130 of the Government Code; the department must release the rest of the report.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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 610957

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Case number 2004-12250011 contains social security numbers. We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).