



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 27, 2016

Mr. Josh Marcum  
Assistant City Attorney  
Office of the City Attorney  
The City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2016-23988

Dear Mr. Marcum:

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# 632182 (ORR# W054331).

The Fort Worth Police Department (the "department") received a request for all records related to a named individual, including nine specified incidents. You state the department has released some of the requested information. 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. This section 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(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and younger than seventeen at the time of the conduct. *See id.* § 51.02(2). Report numbers 99095781, 03109107, 03118122, and 04153074 involve children engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Upon review, we find the exceptions in section 58.007 do not apply to report number 04153074 in this instance.<sup>1</sup> *See id.* § 58.007(e)-(i). Thus, report numbers 99095781, 03109107, 03118122, and 04153074 constitute juvenile law enforcement records that are generally confidential pursuant to section 58.007(c).

In this instance, we note the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Southern District of Texas (the “probation office”) and may have a right of access to some of the information at issue. Section 58.007(e) of the Family Code 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 has a right of access to report numbers 99095781, 03109107, and 03118122 under section 58.007(e) of the Family Code, and the department may not withhold report numbers 99095781, 03109107, and 03118122 from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

---

<sup>1</sup>We note the requestor is seeking information about an individual who is listed as an adult suspect in report number 04153074. The requestor is not seeking information about the individuals named as juvenile suspects or offenders in this report 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[.]”).

Additionally, we note a statutory right of access also prevails over a claim under common-law privacy. *See Collins v. TexMall, 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 Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the department must release report numbers 99095781, 03109107, and 03118122 to this requestor.

Furthermore, 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.” *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 [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). Thus, report number 04153074 contains CHRI related to the named individual. 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, because the requestor represents a “criminal justice agency,” she is authorized to obtain CHRI related to 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)*.

In this instance, you indicate the requestor intends to use the CHRI for a criminal justice purpose. Consequently, pursuant to section 411.087(a)(2), the requestor generally has a right of access to CHRI within report number 04153074. Thus, there is a conflict between the confidentiality provided by section 58.007(c) of the Family Code and the requestor’s right of access to the CHRI 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 id.* § 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) 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 a criminal justice agency by section 411.087(a)(2) of the Government Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Therefore, notwithstanding section 58.007(c), the department must make CHRI available to this requestor from report number 04153074 pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remainder of report number 04153074 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. This office has found 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to the named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records, other than the reports listed above, listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, as noted above, the requestor is a representative the probation office and may have a right of access to CHRI about the named individual related to this otherwise protected

information. *See* Gov't Code § 411.089(a); *see also id.* §§ 411.083(b)(1), .087(a)(2). The information at issue may contain CHRI. As previously discussed, we understand the probation office is a criminal justice agency. *See id.* § 411.082(3)(A). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may receive such information only for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* ORD 655 (discussing limitations on release of CHRI). Thus, the requestor is authorized to obtain CHRI 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(a)(2).

You indicate, to the extent the information at issue exists, it will be used for criminal justice purposes. Therefore, to the extent the department maintains other unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI about the named individual from those records. *See CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544; *Collins*, 297 S.W.3d at 415. Further, to the extent it exists, the department must withhold any remaining information listing the named individual as a suspect, arrested person, or criminal defendant, under section 552.101 of the Government Code in conjunction with common-law privacy.

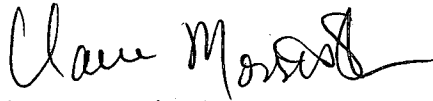
In summary, the department must release report numbers 99095781, 03109107, and 03118122 to this requestor pursuant to section 58.007(e) of the Family Code. The department must make CHRI available to this requestor from report number 04153074 pursuant to section 411.087(a)(2) of the Government Code and must withhold the remainder of report number 04153074 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent the department maintains other unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI about the named individual from those records, and must withhold any remaining such information under section 552.101 of the Government Code in conjunction with common-law privacy.

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](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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bhf

Ref: ID# 632182

Enc. Submitted documents

c: Requestor  
(w/o enclosures)