



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 14, 2016

Ms. Jo Ann Pate  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2016-25331

Dear Ms. Pate:

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# 633992 (City PIR No. W054818).

The City of Fort Worth (the "city") received a request for multiple reports pertaining to a named individual. You state you have released most of the requested 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 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 information protected by other statutes such as section 261.201 of the Family Code, which provides as follows:

(a) [T]he 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). We find service number 00631133, service number 97069595, and case number 05-127740 were used or developed in investigations by the city's police department (the "department") of suspected child abuse or neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.2001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Thus, the information at issue is within the scope of section 261.201(a). Accordingly, we find the information at issue is generally confidential under section 261.201(a). 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). We note some of the information at issue is also subject to section 58.007 of the Family Code, which constitutes applicable state law for purposes of section 261.201(a). Accordingly, we will address the applicability of section 58.007 to the information at issue, as well as the remaining information.

Section 552.101 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(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). Upon review, we find the information you have marked under section 58.007(c) involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, the information you have marked is generally confidential pursuant to section 58.007(c) of the Family Code.

In this instance, however, the requestor is a representative of the Probation and Pretrial Services Office of the United States District Court for the Northern 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 some of the information at issue under section 58.007(e) of the Family Code, and this information may not be withheld under section 552.101 in conjunction with section 58.007(c). As noted above, service number 00631133 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 city must determine whether releasing service number 00631133 to the probation office is consistent with the Family Code. If the city determines the probation office does not intend to use service number 00631133 for purposes consistent with the Family Code, then the city 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). If the city determines the probation office intends to use service number 00631133 for purposes consistent with the Family Code, then the requestor has a right of access to this information in its entirety pursuant to section 58.007(e) of the Family Code, and the city must release this information to the requestor. In any event, the requestor has a right of access to service number 99807543 in its entirety under section 58.007(e), and the city may not withhold this information under section 552.101 of

the Government Code in conjunction with section 58.007(c) of the Family Code. Thus, pursuant to section 58.007(e) of the Government Code, the city must release service number 99807543 to the requestor.

We must address the requestor's right of access to the remaining information under section 411.087(a)(2) of the Government Code. *See* Gov't Code § 411.087(a)(2). As stated above, the requestor is a probation officer with the probation office. Section 411.089(a) of the Government Code provides 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); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in part:

(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." *See id.* § 411.082(2). Thus, the information at issue contains CHRI of the named individual. 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, to the extent the requestor represents a "criminal justice agency," 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 and, with respect to information subject to section 261.201 of the Family Code, for purposes consistent with the Family Code. *See* Gov't Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

We understand the probation office is a criminal justice agency as defined by section 411.082 and the information at issue will be used for criminal justice purposes. However, we are unable to determine whether the requestor intends to use service number 97069595 for purposes consistent with the Family Code. Consequently, if the city determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then the city must release from service number 97069595 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 city must withhold the remaining information in service number 97069595 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold service number 97069595 in its entirety pursuant to section 552.101 in conjunction with section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); ORDs 655, 440 at 2 (construing predecessor statute).

We note the named individual is an adult offender in case number 05-127740 and case number 07-24877. Thus, the requestor does not have a right of access to this information under section 58.007(e) of the Family Code. However, this information contains the CHRI of the individual named in the request. As noted above, the requestor is a representative of the probation office, a criminal justice agency, and the information at issue will be used for criminal justice purposes. Thus, pursuant to section 411.087(a)(2), the requestor generally has a right of access to 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 from case numbers 05-127740 and 07-24877. Accordingly, 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 named individual's CHRI in case numbers 05-127740 and 07-24877 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). 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. Thus, notwithstanding section 58.007(c), the city must make available to this requestor information within case number 07-24877 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.087(a)(2) of the Government Code. The city must withhold the remaining information within case number 07-24877 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

As discussed above, case number 05-127740 is also subject to section 261.201 of the Family Code. Accordingly, notwithstanding section 58.007(c), if the city determines the requestor

intends to use the CHRI for purposes consistent with the Family Code, then the city must release from case number 05-127740 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 city must withhold the remaining information in case number 05-127740 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold case number 05-127740 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); ORDs 655, 440 at 2.

In summary, if the city determines the probation office does not intend to use service number 00631133 for purposes consistent with the Family Code, then the city 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. However, if the city determines the probation office intends to use service number 00631133 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, and it must be released to the requestor. The requestor has a right of access to service number 99807543 under section 58.007(e) of the Family Code, and this information must be released to the requestor. If the city determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then, pursuant to section 411.087(a)(2) of the Government Code, the city must release from service number 97069595 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 city must withhold the remaining information in service number 97069595 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold service number 97069595 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must make available to this requestor information within case number 07-24877 that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.087(a)(2) of the Government Code. The city must withhold the remaining information within case number 07-24877 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the city determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then, pursuant to section 411.087(a)(2) of the Government Code, the city must release from case number 05-127740 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 city must withhold the remaining information in case number 05-127740 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the

city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold case number 05-127740 in its entirety pursuant to 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](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, flowing style.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 633992

Enc. Submitted documents

c: Requestor  
(w/o enclosures)