



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2017

Mr. Christopher K. Austria
Assistant City Attorney
City of Fort Worth
1000 Throckmorton, 3rd Floor
Fort Worth, Texas 76102-6311

OR2017-03240

Dear Mr. Austria:

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# 645412 (Public Information Request No. W056927).

The City of Fort Worth (the "city") received a request for specified incident reports concerning a named individual. You state you released some 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 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 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are subject to section 58.007 of the Family Code, which provides, in relevant part:

(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.

Fam. Code § 58.007(c), (e). 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 submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred 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). As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c).

We note the submitted information lists the named individual as a suspect who was older than seventeen at the time of the conduct. Although the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Northern District of Texas (the "probation office"), she is seeking information about the adult arrestee and not the juvenile offender identified in the submitted information. Thus, we conclude the requestor does not have a right of access to the submitted information under section 58.007(e) of the Family Code. *See id.* § 58.007(e). Therefore, none of the exceptions to section 58.007 apply in this instance, and the submitted information is generally confidential under section 58.007 of the Family Code. However, the requestor may have a right of access to some of the information at issue under section 411.087(a)(2) of the Government Code. *See Gov't Code* § 411.087(a)(2).

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 maintained by the department about a person." *Id.* § 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] criminal history record information 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 criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). We note “criminal history record information” 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). A criminal justice agency that receives criminal history record information 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).

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). “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 understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov’t Code § 411.082(3)(A).

The probation office states it is investigating a named individual. Upon review, we find the requestor is engaged in the administration of criminal justice under chapter 411 and intends to use the criminal history record information of the named individual for a criminal justice purpose. Accordingly, pursuant to section 411.087(a)(2), the city must generally make available to the requestor information pertaining to the named individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Therefore, we find there is a conflict between the confidentiality provided by section 58.007 of the Family Code and the requestor’s right of access under section 411.087(a)(2) of the Government Code.

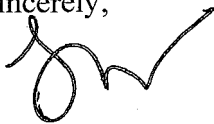
Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as an exception to the general provision unless 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 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, criminal history record information, for a criminal justice purpose. Thus, the statutory right of access granted to the requestor by section 411.087(a)(2) of the Government Code prevails over the more general confidentiality provision of section 58.007 of the Family Code. Therefore, notwithstanding section 58.007(c), the city must make available to the requestor information pertaining to the named individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions available to this requestor from the submitted information pursuant to section 411.087(a)(2) of the Government Code. The city must withhold the remainder of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) 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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 645412

Enc. Submitted documents

c: Requestor
(w/o enclosures)