



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2017

Mr. Jaime Tijerina
Deputy City Attorney
City of Mission
1201 East 8th Street
Mission, Texas 78572

OR2017-06723

Dear Mr. Tijerina:

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# 651280 (Mission File No. 17-0012).

The Mission Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 encompasses former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-Fourth Legislature, former section 51.14(d) provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Section 51.14(d) was continued in effect for that

¹We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided in pertinent part:

(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 is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2).

Upon review, we find the submitted information pertains to juvenile conduct that occurred prior to January 1, 1996, and involves suspects who were ten years of age or older and under seventeen years of age at the time of the offense. Further, the requestor does not fall within the categories in former section 51.14(d) under which inspection of the records would be permitted. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)). Therefore, we find former section 51.14(d) is applicable to the submitted information. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating a need for supervision engaged in by child). Accordingly, the submitted information is generally confidential under former section 51.14(d).

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

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the submitted information pertains to an investigation of alleged or suspected child abuse and, thus, falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for the purposes of this section as a 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) (defining “abuse” for purposes of chapter 261 of the Family Code). Because the department does not indicate it has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Thus, the information is generally confidential pursuant to section 261.201 of the Family Code.

However, we note the requestor is a representative from the Federal Public Defender’s Office for the Southern District of Texas (the “public defender’s office”). Section 261.201(a) provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes “applicable state law” in this instance. Section 411.1272 of the Government Code provides:

The office of capital and forensic writs and a public defender’s office are entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a criminal case in which an attorney compensated . . . by the public defender’s office has been appointed.

Gov’t Code § 411.1272. “Public defender’s office” has the meaning assigned by article 26.044(a) of the Code of Criminal Procedure. *Id.* § 411.082(6); *see also* Crim. Proc. Code art. 26.044(a)(4). In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), 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.

Gov't Code § 411.087(a)(2). "Criminal history record information" ("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).

Upon review, we find the submitted information contains CHRI. Accordingly, the requestor is authorized to obtain the CHRI in the submitted information from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender's office is appointed and release of the information is consistent with the Family Code. *See id.* §§ 411.087(a)(2), .1272; *see also* Fam. Code § 261.201(a).

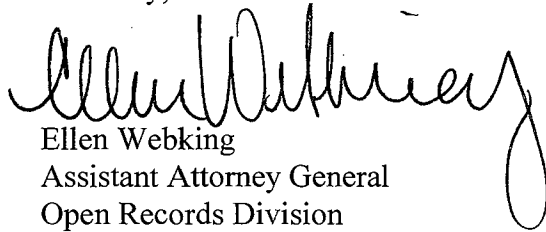
Accordingly, we must address the conflict between the confidentiality provided by former section 51.14(d) of the Family Code and the requestor's right of access under sections 411.087(a)(2) and 411.1272 of the Government Code. Where information falls within both a general and a specific statutory provision, 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(d) generally makes juvenile law enforcement records confidential, sections 411.087 and 411.1272 of the Government Code give a specific type of requestor, a public defender's office, access to particular information, CHRI. Thus, the statutory right of access granted to the requestor by sections 411.087 and 411.1272 of the Government Code prevails over the more general confidentiality provision of former section 51.14(d) of the Family Code.

Therefore, if the department determines the submitted information relates to a criminal case in which an attorney compensated by the public defender's office is appointed and release of the information is consistent with the Family Code, then the department must release CHRI from the submitted information and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines the submitted information does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed or release would not be consistent with 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 section 261.201 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 651280

Enc. Submitted documents

c: Requestor
(w/o enclosures)