



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 17, 2017

Ms. Delietrice Henry  
Open Records Assistant  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2017-10701

Dear Ms. Henry:

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# 658204 (ORR #ATKT030117).

The Plano Police Department (the "department") received a request for information pertaining to a named individual, including four specified incidents. You state the department has released some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 the doctrine of 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. 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. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of

individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The requestor asks for all information held by the department concerning a named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. However, we note you have submitted information that either consists of offense reports of the incidents specified in the instant request or does not list the named individual as a suspect, arrestee, or criminal defendant. Thus, this information does not constitute a criminal history compilation, and the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. To the extent the department maintains law enforcement records other than the reports of the specified incidents 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. In this instance, however, the requestor is a representative of the United States District Court for the Eastern District of Texas Probation and Pretrial Service Office (the "probation office") and may have a right of access to some of the requested 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.

Fam. Code § 58.007(c), (e). You assert portions of the submitted information are confidential pursuant to section 552.101 of the Government Code on the basis of section 58.007(c) of the Family Code. 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 we marked involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, the marked information is generally confidential pursuant to section 58.007(c) of the Family Code.

However, as noted above, the requestor is a representative of the probation office. 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.*; *see also* Crim. Proc. Code art 60.01(1) (defining "administration of criminal justice"). Therefore, the requestor has a right of access to the information we have marked under section 58.007(e) of the Family Code, and the department may not withhold the information at issue from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note although some of these records are confidential under common-law privacy, a specific statutory right of access overcomes 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). Accordingly, the department must generally release to this requestor the information we have marked pursuant to section 58.007(e) of the Family Code.

We note the named individual is an adult offender in case numbers 2005-00114261 and 2005-00114270. Thus, the requestor does not have a right of access to case numbers 2005-00114261 and 2005-00114270 under section 58.007(e) of the Family Code. However, case numbers 2005-00114261 and 2005-00114270, and to the extent it exists any

unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, contain the criminal history record information (“CHRI”) of the individual named in the request. 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 [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). 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, the information at issue contains CHRI. As previously noted, the requestor is a representative of the probation office, a criminal justice agency as defined by section 411.082 of the Government Code. *Id.* § 411.082(3)(A). A criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) of the Government Code may receive such information only for a criminal justice purpose. See *id.* §§ 411.083(c), .087(b). We understand the requestor intends to use the CHRI for a criminal justice purpose. 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 2005-00114261 and 2005-00114270, and to the extent it exists, any unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant. Although the department seeks to withhold the CHRI at issue under section 552.101 in conjunction with common-law privacy, a statutory right of access generally prevails over the common law. *Center Point 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); Attorney General Opinion GA-0290 at 4 (2005) (noting valid rules of administrative agencies have the same “force and effect of legislation”). Further, although you also seek to withhold the CHRI at issue under section 552.108 of the Government Code, a specific statutory right of access overcomes general exceptions to disclosure in the Act. See Open Records Decisions Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge in statutory right

of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the department may not withhold the CHRI at issue pursuant to section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code.

However, 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 2005-00114261 and 2005-00114270 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. 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. Therefore, notwithstanding section 58.007(c), the department must make available to this requestor information within case numbers 2005-00114261 and 2005-00114270 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 department must withhold the remaining information within case numbers 2005-00114261 and 2005-00114270 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Further to the extent it exists, the department must release the CHRI showing the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions contained within any unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant and must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides, in relevant part, 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 report numbers 2006-00006486 and 2006-00018829 were used or developed in an investigation by 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, report numbers 2006-00006486 and 2006-00018829 are within the scope of section 261.201(a). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Accordingly, the department must generally withhold report numbers 2006-00006486 and 2006-00018829 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

As noted above, however, the requestor is a representative of the probation 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. However, we are unable to determine whether the requestor intends to use the CHRI in report numbers 2006-00006486 and 2006-00018829 for purposes consistent with the Family Code. Consequently, if the department determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the department must withhold the CHRI in report numbers 2006-00006486 and 2006-00018829 pursuant to section 552.101 in conjunction with section 261.201. *See id.* § 261.201(b)-(g), (k) (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 requestor intends to use the CHRI for purposes consistent with the Family Code, then the department must release the CHRI from report numbers 2006-00006486 and 2006-00018829.

We note some of the information subject to section 58.007(e) of the Family Code contains motor vehicle record information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an

agency of this state or another state or country is excepted from public release.<sup>1</sup> See Gov't Code § 552.130(a). Accordingly, the motor vehicle record information we marked is generally excepted from disclosure under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right of access to the some of the information at issue pursuant to section 58.007(e) of the Family Code. 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*, 521 S.W.2d at 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 the information subject to section 58.007(e) to the requestor, the department must withhold the motor vehicle record information we marked under section 552.130.

In summary, if the department determines the requestor does not intend to use the CHRI from report numbers 2006-00006486 and 2006-00018829 for purposes consistent with the Family Code, then the department must withhold report numbers 2006-00006486 and 2006-00018829 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines the probation office intends to use the CHRI from report numbers 2006-00006486 and 2006-00018829 for purposes consistent with the Family Code, then the requestor has a right of access to this information pursuant to sections 411.087(a)(2) and 411.089(a) of the Government Code, and it must be released to the requestor. With respect to report numbers 2005-00114261 and 2005-00114270, the department must release the information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, to this requestor pursuant to sections 411.087(a)(2) and 411.089(a) of the Government Code and must withhold the remaining information in report numbers 2005-00114261 and 2005-00114270 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent it exists, the department must release the information that shows the types of allegations made and whether there was an arrest,

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information, indictment, detention, conviction, or other formal charges and their dispositions, to this requestor pursuant to sections 411.087(a)(2) and 411.089(a) of the Government Code in any unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant and must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the information we have marked to this requestor pursuant to section 58.007(e) of the Family Code; in releasing the information subject to section 58.007(e), the department must withhold the motor vehicle record information we marked under section 552.130 of the Government 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,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/eb

Ref: ID# 658204

Enc. Submitted documents

c: Requestor  
(w/o enclosures)