



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 26, 2017

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2017-11623

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# 659396 (W059833).

The Fort Worth Police Department (the "department") received a request for all information pertaining to a named individual. You state you have released some of the information. You claim the submitted 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.

Initially, we note the submitted information includes a department police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and

(3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Section 552.101 of the Government Code exempts 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 information protected by other statutes, including section 261.201 of the Family Code. Section 261.201(a) provides as follows:

[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). Upon review, we find report numbers 95322988 and 93524620 consist of information that was used or developed in investigations by the department under chapter 261, so as to fall within the scope of section 261.201 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 of Family Code). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we conclude the department must withhold report number 95322988 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See Open*

¹As we are able to make this determination, we need not address your arguments against disclosure of this information.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Records Decision No. 440 at 2 (1986) (predecessor statute). Further, we find report number 93524620 is generally confidential pursuant to section 261.201(a) of the Family Code. We note report number 93524620 is also subject to section 51.14 of the Family Code; thus, we will address the applicability of section 51.14 to report number 93524620.

Section 552.101 of the Government Code also encompasses former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Former section 51.14(d) was continued in effect for that 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 relevant 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 (repealed 1995). A “child” is defined as a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Report number 93524620 pertains to an incident that occurred prior to January 1, 1996, and one of the listed suspects was 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 one of the categories in former section 51.14(d) under which inspection of the records would be permitted. Accordingly, report number 93524620 is generally confidential under former section 51.14(d) of the Family Code.

However, we note the requestor is a representative of the United States Probation and Pretrial Services Office for the District of North Dakota (the “probation office”) and may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [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). 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). We note “[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, report number 93524620 contains CHRI. Nevertheless, 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).

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 [CHRI].” Crim. Proc. Code art. 60.01(1). We understand the probation office is engaged in the administration of criminal justice under chapter 411 and 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 the named individual. Upon review, we find the requestor intends to use the record at issue for a criminal justice purpose. Accordingly, pursuant to section 411.087(a)(2), the department must generally make available to this requestor CHRI pertaining to the named individual from report number 93524620. However, we find there is a conflict between the confidentiality provided by former section 51.14(d) 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 former section 51.14(d) 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 the requestor by section 411.087(a)(2) of the Government Code prevails over the more general confidentiality provision of former section 51.14(d) of the Family Code.

However, as noted above, report number 93524620 is also subject to section 261.201(a) of the Family Code. In addition to a right of access under “applicable state law,” section 261.201(a) also requires that release be “for purposes consistent with the [Family Code].” Fam. Code § 261.201(a). Chapter 411 of the Government Code constitutes applicable state law in this instance. Therefore, if the department determines the requestor intends to use report number 93524620 for purposes consistent with the Family Code, as required by section 261.201(a), the department must make available to this requestor CHRI pertaining to the named individual from report number 93524620 pursuant to section 411.087(a)(2) of the Government Code. Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for the information at issue, a specific statutory right of access prevails over common-law privacy. *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); *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); *see also* Open Records Decision Nos. 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). The department must withhold the remaining information in report number 93524620 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines the requestor does not intend to use report number 93524620 for purposes consistent with the Family Code, then report number 93524620 must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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). 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 report number 00530204 involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, this information is generally confidential pursuant to section 58.007(c) of the Family Code.

In this instance, however, as noted above, the requestor is a representative of 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). As discussed above, we understand the probation office is a criminal justice agency as defined by section 411.082. *See Gov't Code* § 411.082(3)(A). Therefore, the requestor generally has a right of access to report number 00530204 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). Although the department raises common-law privacy for the information at issue, as previously mentioned, a statutory right of access prevails over the common-law. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint*, 436 F.3d at 544. Thus, the department may not withhold report number 00530204 from this requestor under section 552.101 in conjunction with common-law privacy.

We note, however, report number 00530204 contains motor vehicle record information that is subject to section 552.130 of the Government Code.³ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. 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. Accordingly, the motor vehicle record information we have marked is generally confidential under section 552.130 of the Government 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. 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. 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, the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code. The remaining information in report number 00530204 must be released to this requestor pursuant to section 58.007(e) 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. However, information that refers to an individual solely as

³The 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).

a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The present request seeks any reports pertaining to the named individual. This request requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Thus, to the extent the department maintains law enforcement records, other than report numbers 95322988, 93524620, and 00530204, listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of criminal history.

We note, however, the requestor, as a representative of the probation office, has a right of access to CHRI in such information pursuant to chapter 411 of the Government Code. As noted above, we understand requestor represents a criminal justice agency and intends to use any CHRI for a criminal justice purpose. *See* Gov't Code § 411.082(3)(A), 083(c), .087(b); ORD 655. Accordingly, to the extent the department maintains law enforcement records, other than report numbers 95322988, 93524620, and 00530204, listing the named individual as a suspect, arrestee, or criminal defendant, we conclude the department must make available to the requestor the CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint*, 436 F.3d at 544. Further, although the department claims some of this information, to the extent it exists, is excepted from disclosure under section 552.108 of the Government Code, as noted above, a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See, e.g.*, ORDs 613 at 4, 451. In that event, to the extent it exists, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of criminal history.

However, the department has submitted report number 04060372, which does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not consist of a compilation of the named individual's criminal history, and the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address your remaining argument against disclosure of this information.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). This office has also concluded some kinds of medical

information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Additionally, the court of appeals concluded public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find some of the information in report number 04060372, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold from report number 04060372 all public citizens' dates of birth and the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information at issue does not constitute highly intimate or embarrassing information of no legitimate public interest. Thus, none of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, as the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the department need not release this information. The department must withhold report number 95322988 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the requestor intends to use report number 93524620 for purposes consistent with the Family Code, the department must make available to this requestor CHRI pertaining to the named individual and must withhold the remaining information in report number 93524620 under section 261.201(a) of the Family Code. However, if the department determines the requestor does not intend to use report number 93524620 for purposes consistent with the Family Code, then report number 93524620 must be withheld in its entirety pursuant to section 552.101 in conjunction with section 261.201(a) of the Family Code. In releasing report number 00530204 pursuant to section 58.007(e) of the Family Code, the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code. To the extent the department maintains law enforcement records, other than report numbers 95322988, 93524620, and 00530204, listing the named individual as a suspect, arrestee, or criminal defendant, we conclude the department must make available to the requestor the CHRI 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 event, to the extent it exists, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of criminal history. The department must withhold from report number 04060372 all public citizens' dates of birth and the information we have marked under section 552.101 in conjunction with common-law privacy. The department must release the remaining information.⁴

⁴We note, because report numbers 95322988 and 04060372 do not contain CHRI of the individual named in the request for information, we do not address whether the requestor, who is a representative of the probation office, has a right of access to CHRI in these reports under section 411.087(a)(2) of the Government Code. See Gov't Code § 411.087(a)(2); see also *id.* § 411.089.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/tdw

Ref: ID# 659396

Enc. Submitted documents

c: Requestor
(w/o enclosures)