



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2017

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2017-12383

Dear Ms. Aguilar:

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# 660673 (CCPD File No. KBot2).

The Corpus Christi Police Department (the "department") received a request for all information concerning a named individual. 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. This section encompasses information protected by other statutes. You claim report number 92-037879 is confidential pursuant to section 58.007(c) of the Family Code, which applies to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The conduct at issue occurred on July 15, 1992. Thus, we note section 58.007 is inapplicable to the information at issue because the conduct at issue did not occur after September 1, 1997. Accordingly, we will address the applicability of former section 51.14 of the Family Code to the information at issue.

Prior to its repeal by the Seventy-fourth Legislature, former 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 92-037879 pertains to juvenile conduct that occurred prior to January 1, 1996. 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 92-037879 is generally confidential under former section 51.14(d) of the Family Code.

In this instance, however, the requestor is an investigator with the Texas Board of Nursing (the “board”). Section 411.125 of the Government Code provides:

The [board] is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who:

- (1) is an applicant for or the holder of a license issued by the board;
- (2) has requested a determination of eligibility for a license from the board; or
- (3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Gov't Code § 411.125. In addition, section 411.087(a) of the Government Code provides in pertinent part:

(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.

Id. § 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). Thus, under sections 411.087(a)(2) and 411.125, the board may have a right of access to CHRI about the named individual contained in the department’s records.

However, the board does not indicate, and we are not otherwise able to determine, whether the named individual in the instant request is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the named individual. Accordingly, we must rule conditionally. If the named individual in this case is not an applicant for or a holder of a license from the board, has not requested a determination of eligibility for a license from the board, and is not subject to investigation by the board in connection with a complaint or formal charge against the named individual, then the board is not authorized to obtain the named individual’s CHRI in the information at issue pursuant to sections 411.087(a)(2) and 411.125 of the Government Code, and the department need not release such information to this requestor. In that instance, the department must withhold report number 92-037879 in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. However, if the named individual is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the suspect, then the board has a general right of access to the information in the otherwise confidential report that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Thus, there is a conflict between the confidentiality provided by former section 51.14(d) of

the Family Code and the requestor's possible right of access under sections 411.087(a)(2) and 411.125 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 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(a)(2) and 411.125 of the Government Code give the board access to particular information, CHRI, if certain conditions are met. Thus, the statutory right of access granted to the requestor by sections 411.087(a)(2) and 411.125 of the Government Code prevails over the more general confidentiality provision of former section 51.14(d) of the Family Code. Additionally, although you seek to withhold the information at issue under section 552.101 in conjunction with common-law privacy, we note a statutory right of access prevails over the Act's general exceptions to public disclosure. *See 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); *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). Therefore, notwithstanding former section 51.14(d), if the department determines the named individual is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the suspect, then the department must make available to this requestor 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 pursuant to sections 411.087(a)(2) and 411.125 of the Government Code. The department must withhold the remaining information in report number 92-037879 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

Section 552.101 of the Government Code also 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.

The present request seeks all offense reports concerning the named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records, other than report number 92-037879, 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. We note the department has submitted report number 1105160130, 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.

However, as noted above, the requestor is a representative of the board and may have a right of access to CHRI about the named individual related to this otherwise protected information pursuant to sections 411.087(a)(2) and 411.125 of the Government Code. Accordingly, if the named individual is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge, then, pursuant to sections 411.087(a)(2) and 411.125 of the Government Code, the requestor is authorized to obtain from the department CHRI relating to the named individual. *See Gov't Code* §§ 411.087(a)(2), .125(a). Thus, if any of these conditions is met, then the department must make available to the requestor any CHRI pursuant to sections 411.087(a)(2) and 411.125 of the Government Code and must withhold any remaining information, to the extent it exists, under section 552.101 of the Government Code in conjunction with common-law privacy. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544. However, if the named individual does not meet any of the criteria of subsections 411.125(a)(1)-(3), then the board does not have a special right of access to any CHRI under section 411.087 of the Government Code. In that instance, to the extent the department maintains law enforcement records, other than report number 92-037879, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Lastly, we address your remaining arguments for report number 110560130. As previously mentioned, section 552.101 of the Government Code encompasses common-law privacy, which is subject to the two part test discussed above. *Indus. Found.*, 540 S.W.2d at 685.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of report number 110560130 from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the report number 1105160130 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

In summary, if the named individual is an applicant for or a holder of a license from the board, has requested a determination of eligibility for a license from the board, or is subject to investigation by the board in connection with a complaint or formal charge against the suspect, the department must: (1) release the CHRI pertaining to the named individual in report number 92-037879 and any CHRI in any other law enforcement records, to the extent they exist, listing the named individual as a suspect, arrestee, or criminal defendant and (2) withhold the remaining information in report number 92-037879 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code and the remaining information in any other law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant under section 552.101 of the Government Code in conjunction with common-law privacy. If the named individual is not an applicant for or a holder of a license from the board, has not requested a determination of eligibility for a license from the board, and is not subject to investigation by the board in connection with a complaint or formal charge against the suspect, the department must withhold report number 92-037879 in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code and any other law enforcement records in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Regardless, the department must withhold report number 1105160130 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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/>

¹We note the requestor is not seeking criminal record information about the individuals named as a suspect in this report so as to implicate the access provided by section 411.125 of the Government Code. *See* Gov't Code § 411.125.

[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, appearing to read 'Jahna Ward', with a large, sweeping flourish at the end.

Jahna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 660673

Enc. Submitted documents

c: Requestor
(w/o enclosures)