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ATTORNEY GENERAL OF TEXAS

August 11, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-18276

Dear Mr. Kopp:

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# 670594 (COSA File No. W169505).

The City of San Antonio (the "city") received a request for information regarding two specified arrests of 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. Section 552.101 of the Government Code encompasses section 51.14(d) 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 Code § 51.14 (repealed 1995). The Seventy-fifth Legislature amended section 58.007 to once again make juvenile law enforcement records confidential effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). However, the legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996, and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007 of the Family Code. Therefore, the information pertaining to conduct that occurred on January 30, 1997, which pertains to report number 97058627, is not made confidential by former section 51.14(d) of the Family Code. Accordingly, the city may not withhold report number 97058627 under section 552.101 of the Government Code on the basis of former section 51.14(d).

Section 51.14 applies to records of a “child,” which is defined as a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Upon review, we find report number 9525770 involves a sixteen-year-old child suspected of unlawful carrying of a weapon in 1995. Thus, the report is a record of juvenile delinquent conduct that occurred prior to January 1, 1996. *See id.* § 51.03 (defining “delinquent conduct”). The exceptions to former section 51.14(d) do not apply to this requestor. Accordingly, we conclude report number 9525770 is confidential under former section 51.14 of the Family Code.

In this instance, the requestor is an investigator with the Texas Department of Licensing and Regulation (the “TDLR”). We note sections 411.093 and 411.122 of the Government Code both provide that the TDLR is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who is an applicant for a license issued by the TDLR. Gov’t Code §§ 411.093(a), .122(a)(1), .122(d)(10). Furthermore, section 411.087 of the Government Code provides an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *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.” *See id.* § 411.082(2). Thus, when read together, sections 411.087, 411.093, and 411.122 of the

Government Code may grant the TDLR a right of access to CHRI in the submitted information. In this instance, the requestor states the information he is seeking relates to an applicant for a license issued by the TDLR. Therefore, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the requestor is authorized to obtain CHRI from the city. However, we must address the conflict between former section 51.14(d) of the Family Code and sections 411.087, 411.093, and 411.122 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 411.093 and 411.122, in concert with section 411.087, of the Government Code give one specific requestor, the TDLR, access to particular information, CHRI, found in records involving particular individuals, applicants for a license issued by the TDLR. *See* Gov't Code §§ 411.087, .093(a), .122(a)(1), .122(d)(10); Fam. Code § 51.14. Thus, the statutory right of access granted to the TDLR by sections 411.087, 411.093, and 411.122 of the Government Code prevails over the more general confidentiality provision of former section 51.14(d) of the Family Code. Therefore, pursuant to sections 411.087, 411.093, and 411.122 of the Government Code, the city must release 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. The city must withhold the remaining information in report number 9525770 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are 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.). Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must release to this requestor information in report number 9525770 that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions; however, the city must withhold the remaining information in report number 9525770 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the

Family Code. With regard to report number 97058627, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and must release the remaining information.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 670594

Enc. Submitted documents

c: Requestor
(w/o enclosures)