



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2017

Mr. Thomas Royce Hansen
Assistant City Attorney
City of Fort Worth
200 Texas Street, Third Floor
Fort Worth, Texas 76102

OR2017-28163

Dear Mr. Hansen:

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# 687590 (Request No. W065429).

The Fort Worth Police Department (the "department") received a request for information pertaining to eight specified incidents involving a named individual and all other information pertaining to the named individual. You state you have released some information. 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 encompasses statutes such as 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). You state report numbers 96052588 and 98146152 are subject to chapter 261 of the Family Code. Upon review, we agree report numbers 96052588 and 98146152 consist of information that was used or developed in an investigation 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) (defining “abuse” for purposes of chapter 261 of the 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 find report numbers 96052588 and 98146152 are generally confidential pursuant to section 261.201 of the Family Code.

However, the requestor is a representative of the Probation Office of the United States District Court for the Western District of Texas (the “probation office”). Section 261.201 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 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any criminal history record information [(“CHRI”)] maintained by the [DPS] about a person.” Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in pertinent part:

(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). 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 CHRI). Section 411.082 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). Upon review, we find the probation office is engaged in the administration of criminal justice for purposes of chapter 411. Therefore, the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a); Gov’t Code §§ 411.083(c), .087(a)(2).

The probation office states it will use the requested information to investigate the named individual. Thus, we find the requestor intends to use the CHRI for a criminal justice purpose. Accordingly, she is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code, but only for purposes consistent with the Family Code. *See id.* §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a). However, we are unable to determine whether the requestor intends to use the CHRI of the named individual in the information at issue for purposes consistent with the Family Code. Consequently, if the department determines the requestor intends to use the CHRI in report numbers 96052588 and 98146152 for purposes consistent with the Family Code, then the department must release the information at issue that is otherwise subject to section 261.201 of the Family Code and 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 instance, the department must withhold the remaining information in report numbers 96052588 and 98146152 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. 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 report numbers 96052588 and 98146152 in their entireties under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See id.* § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

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. 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, in part, for all information held by the department concerning a named individual. However, the requestor also asks for information pertaining to specific incidents. Because the requestor specifically asks for this information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. Therefore, reports 97688457, 97708852, 99145587, 0505579, 05101879, and 150098904 are not confidential under common-law privacy, and the department may not withhold these reports under section 552.101 of the Government Code on that ground. Accordingly, we will address your arguments to withhold this information. However, to the extent the department maintains any unspecified law enforcement information depicting the 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.

However, as discussed above, we find the requestor intends to use the CHRI for a criminal justice purpose. Accordingly, to the extent the department maintains law enforcement records, other than the reports listed above, listing the named individual as a suspect, arrestee, or criminal defendant, the department must make CHRI available to the requestor pursuant to chapter 411 of the Government Code. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint*, 436 F.3d at 544. To the extent it exists, the department must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy as a compilation of criminal history.

Section 552.101 also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

(d) Law enforcement records concerning a child may be inspected or copied by:

(1) a juvenile justice agency, as defined by Section 58.101;

(2) a criminal justice agency, as defined by Section 411.082, Government Code;

(3) the child; or

(4) the child's parent or guardian.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See id.* § 58.008(b). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). You state reports 97688457, 97708852, and 99145587 are subject to section 58.008(b) of the Family Code. We find reports 97688457, 97708852, and 99145587 involve juvenile offenders, so as to fall within the scope of section 58.008(b). Therefore, reports 97688457, 97708852, and 99145587 are generally confidential pursuant to section 58.008(b) of the Family Code.

However, section 58.008(d) gives a “criminal justice agency, as defined by Section 411.082, Government Code” a right of access to juvenile law enforcement records. *See id.* § 58.008(d). As discussed above, we understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov't Code §§ 411.083(c), .087(a)(2). Therefore, the requestor has a right of access to these reports under section 58.008(d) 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 58.008(b) of the Family Code. Accordingly, the department must generally release reports 97688457, 97708852, and 99145587 to this requestor.

We note, however, reports 97688457 and 97708852 contain motor vehicle record information subject to section 552.130 of the Government Code.¹ 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. *See id.* § 552.130(a). Accordingly, the motor vehicle record information we marked is generally confidential under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right of access to reports 97688457, 97708852, and 99145587. Therefore, we must address the conflict between the access provided under section 58.008(d)(2) 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 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, section 58.008(d)(2) 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 58.008(d)(2). Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the department determines the requestor intends to use report numbers 96052588 and 98146152 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 these reports under section 261.201(a) of the Family Code. However, if the department determines the requestor does not intend to use report numbers 96052588 and 98146152 for purposes consistent with the Family Code, then these reports must be withheld in their entireties pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must make CHRI available to the requestor pursuant to chapter 411 of the Government Code, but the department must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information

¹The 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).

we marked under section 552.130 of the Government Code. The department must release the remaining information.²

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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 687590

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office.