



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2019

Ms. Brittaney N. Davis
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-13165

Dear Ms. Davis:

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# 765855 (PIR# W081934).

The City of Fort Worth (the "city") received a request for information pertaining to five incidents involving a named individual. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

¹We note the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office with respect to some of the submitted information. *See* Gov't Code § 552.301(e) (requiring governmental body to submit within fifteen business days of receiving request for information comments explaining applicability of raised exceptions, copy of request for information, signed statement of date governmental body received request or evidence sufficient to establish date, and copy of information governmental body seeks to withhold or representative samples). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the information at issue, notwithstanding the city's violation of section 552.301 in requesting this decision.

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 information protected by other statutes such as section 261.201 of the Family Code, which provides 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 reports 95653484, 96089311, and 96093594 were used or developed in investigations by the city’s police 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), 261.2001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Thus, the information at issue is within the scope of section 261.201(a). Accordingly, we find the information at issue is generally confidential under section 261.201(a). We note report 95653484 and remaining report 96018611 are subject to section 58.008 of the Family Code.

Section 552.101 of the Government Code 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 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.

Id. § 58.008(b); *see id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find reports 95653484 and 96018611 involve children engaged in delinquent conduct or conduct indicating a need for supervision. Therefore, these reports are generally confidential pursuant to section 58.008(b) of the Family Code.

In this instance, the requestor is a representative of the Tarrant County County Criminal District Attorney’s Office (the “district attorney’s office”) and may have a right of access to some of the information pursuant to chapter 411 of the Government Code. With respect to reports 95653484, 96089311, and 96093594, which are subject to section 261.201 of the Family Code, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We find chapter 411 is applicable state law for the purposes of section 261.201. 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. *See* Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or subchapter E-1 to obtain from [DPS CHRI] maintained by [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.” *See id.* § 411.082(2). Thus, the information at issue contains CHRI of the named individual. However, a criminal justice agency that receives CHRI from another criminal justice agency

pursuant to section 411.087(a)(2) may receive such information only for a criminal justice purpose. *See id.* §§ 411.083(c), .087(b); *see also* Open Records Decision Nos. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor is authorized to obtain CHRI from the city pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose and, with respect to the information subject to section 261.201 of the Family Code, for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

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 district attorney’s office is a criminal justice agency as defined by section 411.082 and the information at issue will be used for criminal justice purposes. However, we are unable to determine whether the requestor intends to use these reports for purposes consistent with the Family Code. Consequently, if the city determines the requestor intends to use the CHRI in reports 96089311 and 96093594 for purposes consistent with the Family Code, the city must release CHRI from reports 96089311 and 96093594. In that instance, the city must withhold the remaining information in those two reports under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold reports 96089311 and 96093594 in their entireties pursuant to section 552.101 in conjunction with section 261.201(a). *See* Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

We note the named individual is an adult offender in reports 95653484 and 96018611, which are subject to section 58.008 of the Family Code. Thus, the requestor does not have a right of access to this information under section 58.008(d) of the Family Code. *See* Fam. Code § 58.008(d)(2). However, this information contains the CHRI of the individual named in the request. As noted above, the requestor is a representative of the district attorney’s office, a criminal justice agency, and the information at issue will be used for criminal justice purposes. Thus, pursuant to section 411.087(a)(2), the requestor generally has a right of access to CHRI from reports 95653484 and 96018611. Accordingly, there is a conflict between the confidentiality provided by section 58.008(b) of the Family Code and the requestor’s right of access to the named individual’s CHRI in reports 95653484 and 96018611 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* 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 58.008(b) 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 58.008(b) of the Family Code. Thus, notwithstanding section 58.008(b), the city must release CHRI within report 96018611 to this requestor pursuant to section 411.087(a)(2) of the Government Code. The city must withhold the remaining information within report 96018611 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

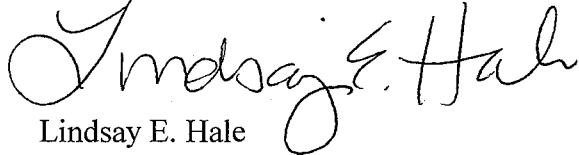
As discussed above, report 95653484 is also subject to section 261.201 of the Family Code. Accordingly, notwithstanding section 58.008(b), if the city determines the requestor intends to use the CHRI for purposes consistent with the Family Code, then the city must release CHRI from report 95653484 to this requestor. In that instance, the city must withhold the remaining information in report 95653484 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the city determines the requestor does not intend to use the CHRI for purposes consistent with the Family Code, then the city must withhold report 95653484 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. See Fam. Code § 261.201(b)-(g), (k) (listing entities authorized to receive section 261.201 information); ORDs 655, 440 at 2.

In summary, if the city determines the district attorney's office does not intend to use reports 95653484, 96089311, and 96093594 for purposes consistent with the Family Code, then the city must withhold these reports in their entireties pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines the probation office intends to use the CHRI in reports 95653484, 96089311, and 96093594 for purposes consistent with the Family Code, the city must release CHRI pursuant to section 411.087(a)(2) of the Government Code and must withhold the remaining information in reports 95653484, 96089311, and 96093594 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must release CHRI from report 96018611 pursuant to section 411.087(a)(2) of the Government Code and must withhold the remaining information in report 96018611 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family 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, 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 that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 765855

Enc. Submitted documents

c: Requestor
(w/o enclosures)