



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2019

Mr. Christopher K. Austria
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-19693

Dear Mr. Austria:

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# 775783 (ORR W084294).

The City of Fort Worth (the "city") received a request for all information pertaining to 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 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 report number 96551265 was used or developed in an investigation 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).

In this instance, the requestor is a representative of the Tarrant 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 report number 96551265, which is 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 report number 96551265 for purposes consistent with the Family Code, the city must release CHRI from report number 96551265. In that instance, the city must withhold the remaining information in that report 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 report number 96551265 in its entirety 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).

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.

Fam. Code § 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 the reports in Exhibit C 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.

As noted above, the requestor is a representative of the district attorney’s office. Section 58.008(d)(2) of the Family Code 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)(2). 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). Thus, we find the requestor is requesting the information on behalf of a criminal justice agency as provided by section 58.008(d) of the Family Code. Therefore, the requestor generally has a right of access under section 58.008(d) to report number 96161147 and the city may not withhold the information at issue under section 552.101 in conjunction with section 58.008(b) of the Family Code.

We note the named individual is an adult offender in report numbers 96736027, 96736079, 97581646, 97590933, and 98247818, 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 report numbers 96736027, 96736079, 97581646, 97590933, and 98247818. 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 report numbers 96736027, 96736079, 97581646, 97590933, and 98247818 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 numbers 96736027, 96736079, 97581646, 97590933, and 98247818 to this requestor pursuant to section 411.087(a)(2) of the Government Code. The city must withhold the remaining information within these reports under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Section 552.130 of the Government Code 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.¹ *See* Gov't Code § 552.130. Upon review, we find some of the remaining information contains motor vehicle record information subject to section 552.130. Therefore, the city must generally withhold the information we marked under section 552.130.

We note the information subject to section 552.130 is within report number 96161147. As previously noted, the requestor has a statutory right of access to report number 96161147 under section 58.008(d)(2) of the Family Code. As noted above, a specific statutory right of access prevails over general exceptions to disclosure under the Act. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 58.008(d)(2) and the confidentiality provided under section 552.130. 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 277. 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. 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 city must withhold the motor vehicle record information we marked in report number 96161147 under section 552.130 of the Government Code.

In summary, if the city determines the district attorney's office does not intend to use report number 96551265 for purposes consistent with the Family Code, then the city must withhold this report in its entirety 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 district attorney's office intends to use the CHRI in report number 96551265 for purposes consistent with the Family Code, the city must release CHRI pursuant to section 411.087(a)(2) of the

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).

Government Code and must withhold the remaining information in that report 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 numbers 96736027, 96736079, 97581646, 97590933, and 98247818 pursuant to section 411.087(a)(2) of the Government Code and must withhold the remaining information in report numbers 96736027, 96736079, 97581646, 97590933, and 98247818 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The city must withhold the information we marked in report number 96161147 under section 552.130 of the Government Code, but must release the remaining information in the report to the requestor pursuant to section 58.008(d) 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/gw

Ref: ID# 775783

Enc. Submitted documents

c: Requestor
(w/o enclosures)