



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2019

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

OR2019-20422

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# 777295 (PIR# W084730).

The City of Fort Worth (the "city") received a request for thirteen specified police reports. You state the city has 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 section 261.201 of the Family Code, which provides, in relevant part:

(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). Upon review, we find report number 98178143 was used or developed in an investigation of alleged or suspected child abuse by the city's police department. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). Thus, report number 98178143 is within the scope of section 261.201(a). Accordingly, we find report number 98178143 is generally confidential under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.¹ However, 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).

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 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.

Id. § 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* Act of May 28, 2017, 85th Leg., R.S.,

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

ch. 746, § 22, 2017 Tex. Sess. Law Serv. 3173, 3187. 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). We find report number 98605947 involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, the city must generally withhold report number 98605947 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

However, we note the requestor is a representative of the United States District Court for the Northern District of Texas Probation and Pretrial Service Office (the “probation office”) and may have a right of access to some of the information at issue. 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). In addition, section 411.087(a) of the Government Code provides, in pertinent part, the following:

(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). Thus, the information at issue contains CHRI of the named individual. 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 criminal history record information).

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). “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 criminal history record information.” Crim. Proc. Code art. 60.01(1). We understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov’t Code § 411.082(3)(A).

The probation office states it is investigating a named individual. Upon review, we find the requestor is engaged in the administration of criminal justice under chapter 411 and intends to use the CHRI of the named individual for a criminal justice purpose. Accordingly, pursuant to section 411.087(a)(2), the city must generally make available to the requestor information pertaining to the named individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Therefore, we find there is a conflict between the confidentiality provided by section 58.008(b) of the Family Code and the requestor’s right of access 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 id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as an exception to the 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 58.007(c) 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, criminal history record information, for a criminal justice purpose. Thus, the statutory right of access granted to the requestor 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. Therefore, notwithstanding section 58.008(b), the city must make available to the requestor CHRI from report number 98605947 pursuant to section 411.087(a)(2) of the Government Code but must withhold the remainder of report number 98605947 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

We note chapter 411 of the Government Code constitutes “applicable state law” for the purposes of section 261.201(a) of the Family Code. *See* Fam. Code § 261.201(a). Thus, as a representative of a criminal just agency who seeks the information at issue for a criminal justice agency, the requestor may be authorized to obtain the CHRI in report number 98178143 from the city pursuant to section 411.087(a)(2), but only for purposes consistent with the Family Code. *See* Gov’t Code §§ 411.087, .089. However, we are unable to determine whether release of the CHRI, in this instance, is consistent with the Family Code. Accordingly, if the city determines release of the CHRI is consistent with the Family Code, then the city must make available to the requestor the CHRI from report number 98178143 and must withhold the remaining information pertaining to report number 98178143 under

section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines release of the CHRI is not consistent with the Family Code, then the city must withhold report number 98178143 in its entirety under 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); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute).

In summary, the city must make available to this requestor CHRI pertaining to the named individual from report number 98605947 pursuant to section 411.087(a)(2) of the Government Code and must withhold the remainder of report number 98605947 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the city determines release of the CHRI is consistent with the Family Code, then the city must make available to the requestor the CHRI from report number 98178143 and must withhold the remaining information pertaining to report number 98178143 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the city determines release of the CHRI is not consistent with the Family Code, then the city must withhold report number 98178143 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/mo

Ref: ID# 777295

Enc. Submitted documents

c: Requestor
(w/o enclosures)