



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2019

Ms. Delietrice Henry
Open Records Assistant
Plano Police Department
P. O. Box 860358
Plano, Texas 75086-0358

OR2019-21171

Dear Ms. Henry:

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# 778187 (ORR# P001223-050919).

The Plano Police Department (the "department") received a request for seven specified police reports involving a named individual. You state the department has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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 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). Exhibit C involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the department must generally withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

We note Exhibit C lists the named individual as a suspect who was older than seventeen at the time of the incident at issue. Although the requestor is a representative of the United States District Court, Eastern District of Texas, Probation Office (the “probation office”), we note the requestor is seeking information about the adult suspect and not the juvenile offender identified in Exhibit C. Thus, we conclude the requestor does not have a right of access to Exhibit C under section 58.008(d) of the Family Code. *See id.* § 58.008(d) (providing “[l]aw enforcement records concerning a child may be inspected or copied by a criminal justice agency as that term is defined by Section 411.082, Government Code[.]”).

We note, however, section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from [DPS] any [CHRI] maintained by [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 [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). However, 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 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 66.001(1) of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 66.001(1) 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. 66.001(1).

We note the probation office is a criminal justice agency as defined by section 411.082, and the requestor intends to use the CHRI for a criminal justice purpose. Consequently, pursuant to section 411.087(a)(2), the department 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. Thus, 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* 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) of

the Family Code 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 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 department must make available to the requestor CHRI pertaining to the named individual from Exhibit C pursuant to section 411.087(a)(2) of the Government Code, but must withhold the remainder of Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit B relates to a pending investigation, and release of this information would interfere with pending law enforcement activities. Based upon this representation, we conclude the release of Exhibit B would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to Exhibit B.

However, as you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See* Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information you state has been released, the department may generally withhold Exhibit B under section 552.108(a)(1) of the Government Code.

As noted above, the requestor is a representative of the probation office and has a right of access to some of the information at issue under chapter 411 of the Government Code, which prevails over section 552.108. *See* Gov’t Code §§ 411.089(a), .087(a)(2); Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the department must make available to the requestor the CHRI from Exhibit B that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* ORD 451. Accordingly, with the exception of CHRI pertaining to the named individual, which must be released to the requestor pursuant to section

411.087(a)(2) of the Government Code, and the basic information, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code.

In summary, the department must make available to the requestor CHRI pertaining to the named individual from Exhibit C pursuant to section 411.087(a)(2) of the Government Code but must withhold the remainder of Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of CHRI pertaining to the named individual, which must be released to the requestor pursuant to section 411.087(a)(2) of the Government Code, and the basic information, which must be released, the department may withhold Exhibit B under section 552.108(a)(1) of the Government 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/jxd

Ref: ID# 778187

Enc. Submitted documents

c: Requestor
(w/o enclosures)