



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 13, 2019

Mr. Trey Qualls
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2019-22342

Dear Mr. Qualls:

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# 782079 (ORR# W086156).

The Fort Worth Police Department (the "department") received a request for ten specified reports involving a named individual. The department states it is releasing some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims 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 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.

(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.

Id. § 58.008(b), (d); *see also 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. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we agree report numbers 10-76794, 11-78522, and 12-27396 involve juvenile offenders, so as to fall within the scope of section 58.008(b). However, we note the requestor is a representative of the United States District Court Federal Probation System (the “probation 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 numbers 10-76794, 11-78522, and 12-27396 and the department may not withhold the information at issue under section 552.101 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 portions of report numbers 10-76794, 11-78522, and 12-27396, which we marked, consist of motor vehicle record information subject to section 552.130. Therefore, the department must generally withhold the information we marked under section 552.130.

As previously noted, the requestor has a statutory right of access to report numbers 10-76794, 11-78522, and 12-27396 under section 58.008(d)(2) of the Family Code. 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 department must withhold the motor vehicle record information we marked in report numbers 10-76794, 11-78522, and 12-27396 under section 552.130 of the Government Code.

Section 552.101 of the Government Code also 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 agree report number 13-108982 was used or developed in an investigation of alleged or suspected child abuse by the department. See

¹ The 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).

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 13-108982 is within the scope of section 261.201(a). The department does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we find report number 13-108982 is generally confidential under section 261.201(a).

As noted above, the requestor is a representative of 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 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 justice agency who seeks the information at issue for a criminal justice agency, the requestor may be authorized to obtain the CHRI in report number 13-108982 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 department determines release of the CHRI is consistent with the Family Code, then the department must make available to the requestor the CHRI from report number 13-108982 and must withhold the remainder of report number 13-108982 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We also note the requestor’s right of access to the information prevails over common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). However, if the department determines release of the CHRI is not consistent with the Family Code, then the department must withhold report number 13-108982 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).

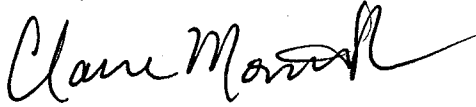
In summary, the department must withhold the motor vehicle record information we marked in report numbers 10-76794, 11-78522, and 12-27396 under section 552.130 of the Government Code and must release the remainder of report numbers 10-76794, 11-78522, and 12-27396 pursuant to section 58.008(d) of the Family Code.² The department must withhold report number 13-108982 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; however, if the department determines release of the CHRI is consistent with the Family Code, then the department must make available to the requestor the CHRI from report number 13-108982.

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.

² The information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 782079

Enc. Submitted documents

c: Requestor
(w/o enclosures)