



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2019

Mr. Thomas Royce Hansen
Mr. Christopher K. Austria
Assistant City Attorneys
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2019-27327

Dear Mr. Hansen and 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# 788072 (City PIR Nos. W087672 and W090128).

The Fort Worth Police Department (the "department") received two requests from the same requestor for specified incident reports involving a named individual. You state you have released some information to the requestor. 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. This section encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), 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:

...

(2) a criminal justice agency, as defined by Section 411.082, Government Code[.]

Act of May 14, 2019, 86th Leg., R.S., H.B. 1760, § 4 (to be codified at Fam. Code § 58.008(b)); Fam. Code § 58.008(d)(2); *see also* Fam. Code § 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. 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). Upon review, we agree the submitted information involves 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, Northern District of Texas, Probation and Pretrial Services (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 has a right of access under section 58.008(d) to service number 97187049 and the department may not withhold service number 97187049 under section 552.101 in conjunction with section 58.008(b) of the Family Code.

However, we note service numbers 01477231 and 02117574 list the named individual as a suspect who was seventeen years of age or older at the time of the incidents at issue. Although the requestor is a representative of the probation office, the requestor is seeking information about the adult arrestee and not the juvenile offenders identified in service numbers 01477231 and 02117574. Thus, we conclude the requestor does not have a right of access to service numbers 01477231 and 02117574 under section 58.008(d) of the Family Code. *See* Fam. Code § 58.008(d). Therefore, service numbers 01477231 and 02117574 are generally confidential under section 58.008(b) of the Family Code.

As noted above, the requestor is a representative of the probation office. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“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 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 from service numbers 01477231 and 02117574 pursuant to section 411.087(a)(2) of the Government Code, but must withhold the remainder of service numbers 01477231 and 02117574 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

In summary, the department must make available to the requestor CHRI from service numbers 01477231 and 02117574 pursuant to section 411.087(a)(2) of the Government Code, but must withhold the remainder of service numbers 01477231 and 02117574 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must release the remaining information to this requestor.¹

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 <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

¹ We note some of the information being released in this instance includes information that is confidential with respect to the general public. *See* Fam. Code § 58.008(d)(2); Gov't Code §§ 411.087(a)(2), .089(a). Therefore, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized, cursive script.

Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 788072

Enc. Submitted documents

c: Requestor
(w/o enclosures)