



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 3, 2020

Mr. Jim Kachelmeyer  
Assistant City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2020-00167

Dear Mr. Kachelmeyer:

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# 806601 (ORR# G008875).

The Georgetown Police Department (the "department") received a request for all reports at a specified address during a specified time period. 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 (c), 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.

Fam. Code § 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., 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). Case numbers 2019-021-016 and 2019-075407 involve 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 case numbers 2019-021-016 and 2019-075407 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. Upon review, however, we find the remaining information does not list a juvenile as a suspect, offender, or defendant. Thus, the department has not demonstrated the remaining information involves juvenile conduct for purposes of section 58.008(b) of the Family Code. Accordingly, the department may not withhold the remaining information under section 552.101 of the Government Code on that basis.

However, the requestor is a representative of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114(a) of the Government Code states in pertinent part:

(2) [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). For purposes of section 411.114, CHRI consists of "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, these provisions may grant the DFPS investigator a right of access to CHRI in the information at issue. The requestor does not specifically state whether any subject in case numbers 2019-021-016 and 2019-075407 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the information at issue, and we must rule conditionally. Therefore, if none of the subjects in case numbers 2019-021-016 and 2019-075407 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department is not required to release the CHRI pursuant to section 411.114. However, if any of the subjects in case numbers 2019-021-016 and 2019-075407 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the requestor is authorized by section 411.114 of the Government Code to obtain CHRI from the department regarding that individual. *See id.* § 411.114. In that situation, we must address the conflict between confidentiality under section 58.008(b) of the Family Code and access under section 411.114 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 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). While section 58.008(b) generally makes juvenile law enforcement records confidential, section 411.114 of the Government Code gives one specific requestor, DFPS, access to particular information, CHRI, found in records involving particular individuals, alleged perpetrators in a DFPS report of abuse or neglect of a child. *See Gov't Code* § 411.114; *Fam. Code* § 58.008(b). Thus, the statutory right of access granted to DFPS by section 411.114 of the Government Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code. Therefore, if the department determines any of the subjects in case numbers 2019-021-016 and 2019-075407 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release the CHRI pertaining to that individual pursuant to

section 411.114 of the Government Code, but must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if none of the subjects in case numbers 2019-021-016 and 2019-075407 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must withhold case numbers 2019-021-016 and 2019-075407 in their entireties under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 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. See Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the department determines any of the subjects in case numbers 2019-021-016 and 2019-075407 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release the CHRI pertaining to that individual pursuant to section 411.114 of the Government Code, but must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must withhold the information we marked, as well as all public citizens' dates of birth, under section 552.101

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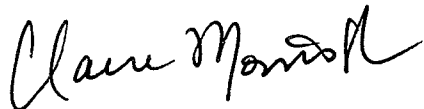
<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor.

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 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/mo

Ref: ID# 806601

Enc. Submitted documents

c: Requestor  
(w/o enclosures)