



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 1, 2020

Mr. Christopher K. Austria  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2020-09936

Dear 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# 821133 (PIR No. W096586).

The City of Fort Worth (the "city") received a request for all information pertaining to a named individual and a specified address. You state you will release 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

Except as provided by Section 261.203, the 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). Exhibit D relates to an investigation of alleged or suspected child abuse or neglect conducted by the city's police department. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); *see also 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. The city 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 conclude Exhibit D is confidential pursuant to section 261.201 of the Family Code and must generally be withheld under section 552.101 of the Government Code on that basis. *See id.* § 261.201(a). However, we note section 261.201(a) also provides information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *See id.* Chapter 411 of the Government Code constitutes "applicable state law" in this instance.

We note 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 the [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). In this case, the requestor is a representative of the Child Protective Services Division of DFPS, but does not specifically state whether the subject of the information in Exhibit D 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 Exhibit D, and we must rule conditionally. Therefore, if the subject of Exhibit D is not an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, the CHRI is not subject to release to this requestor under section 411.114, and Exhibit D must be withheld 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 subject of Exhibit D 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 city regarding that individual. *See id.* § 411.114.

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.

Fam. Code § 58.008(b)); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). 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., S.B. 1304, § 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 find Exhibit C 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 Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, as previously noted, the requestor is a representative of DFPS and may have a right of access to CHRI pursuant to section 411.114 of the Government Code. *See Gov’t Code § 411.114(a)(2), (a)(4).* Therefore, we must address the conflict between section 58.008(b) of the Family Code and 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). In this instance, 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 city determines the subject of Exhibit C is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the city must release the CHRI from Exhibit C to the requestor pursuant to section 411.114 of the Government Code.

In summary, the city must generally withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and must generally withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; however, if the subjects of the reports are alleged perpetrators in a report received by DFPS of abuse or neglect of a child, then the city must release CHRI pursuant to section 411.114 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 <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,

Amy Shipp  
Assistant Attorney General  
Open Records Division

ALS/mo

Ref: ID# 821133

Enc. Submitted documents

c: Requestor  
(w/o enclosures)