KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2020

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

OR2020-13593

Dear Mr. Murray:

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# 831709 (ORR# W099602).

The Fort Worth Police Department (the "department") received a request for a specified incident report that involves a named individual. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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). The submitted information relates to an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" 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 section 261.201 of the Family Code. 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 conclude the submitted information is generally confidential pursuant to section 261.201(a) of the Family Code. *See id.* § 261.201(a). However, section 261.201(a) 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 with the Federal Bureau of Investigation's National Instant Criminal Background Check System. 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 [DPS] about a person." *See* Gov't Code § 411.089(a). In addition, section 411.087(a)(2) of the Government Code provides 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 criminal history record information). Thus, to the extent the requestor represents a "criminal justice agency," the requestor is authorized to obtain CHRI concerning the named individual from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2).

The requestor represents a criminal justice agency as defined by section 411.082 and we understand he intends to use the CHRI of the named individual for a criminal justice purpose. However, we are unable to determine whether the requestor intends to use the CHRI at issue for purposes consistent with the Family Code. Thus, we must rule conditionally. If the department determines the requestor does not intend to use the CHRI

of the named individual for purposes consistent with the Family Code, then it must withhold the submitted information 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 the requestor intends to use the CHRI at issue for purposes consistent with the Family Code, then the requestor is authorized by section 411.087 of the Government Code to obtain CHRI regarding that individual from the department. *See id.* § 411.087(a)(2).

Section 552.101 of the Government Code also encompasses section 58.008(b) of the Family Code, which provides as follows:

> (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)-(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., 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 the CHRI involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear the exceptions in section 58.008 apply. Therefore, the CHRI is confidential under section 58.008(b) of the Family Code. However, as previously noted, the requestor may have a right of access to the CHRI pursuant to section 411.087 of the Government Code. *See* Gov't Code § 411.087(a)(2). Accordingly, we must address the conflict between confidentiality under section 58.008(b) of the Family Code and access under section 411.087 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). 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, if the department determines the requestor intends to use the CHRI at issue for purposes consistent with the Family Code, then the department must release the CHRI of the named individual pursuant to section 411.087 of the Government Code.

In summary, if the department determines the requestor does not intend to use the CHRI of the named individual for purposes consistent with the Family Code, then it must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the department determines the requestor intends to use the CHRI at issue for purposes consistent with the Family Code, then the department must release the CHRI of the named individual pursuant to section 411.1087 of the Government Code, but withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jlbm

Ref: ID# 831709

Enc. Submitted documents

c: Requestor
(w/o enclosures)