



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 17, 2020

Mr. Trenton M. Dietz  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2020-16238

Dear Mr. Dietz:

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# 834705 (ORR# 20-852).

The Abilene Police Department (the "department") received a request for all records related to a named individual and her family at a specified address during a specified time period. The department states it is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> The department states it is releasing some of the requested information to this requestor pursuant to the doctrine of intergovernmental transfer. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). 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 representative sample of information.<sup>2</sup>

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> Gov’t Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). Report number 20-017519 was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *See 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), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must withhold report number 20-017519 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>4</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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 (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:

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<sup>3</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).

<sup>4</sup> As our ruling is dispositive for this information, we need not address the department’s argument against its disclosure.

- (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). Report number 20-019350 involves 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 report number 20-019350 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

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] or the Health and Human Services Commission [the (“HHSC”)], as applicable, 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] or the HHSC 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] and the HHSC are 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 report number 20-019350 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 report number 20-019350 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 report number 20-019350 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 report number 20-019350 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 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 at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must withhold report number 20-019350 in

its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

In summary, the department must withhold report number 20-017519 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and must generally withhold report number 20-019350 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; however, if the department determines any of the subjects in report number 20-019350 is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release CHRI pertaining to that individual 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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jxd

Ref: ID# 834705

Enc. Submitted documents

c: Requestor  
(w/o enclosures)