



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2020

Ms. Jacqueline Villarreal
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2020-22561

Dear Ms. Villarreal:

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# 844654 (ORR# 2020-0112-DA.CO).

The Hidalgo County Juvenile Probation Department (the "department") received a request for information related to four specified offenses involving a named individual. The department states it is releasing some of the requested information. 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. This section encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007 provides, in relevant part:

(b) Except as provided by Section 54.051(d-1) and by Article 15.27, Code of Criminal Procedure, the records, whether physical or electronic, of a juvenile court, a clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under [Title 3 of the Family Code] may be inspected or copied only by:

(1) the judge, probation officers, and professional staff or consultants of the juvenile court;

(2) a juvenile justice agency as that term is defined by Section 58.101;

(3) an attorney representing the child's parent in a proceeding under this title;

(4) an attorney representing the child;

(5) a prosecuting attorney;

(6) an individual or entity to whom the child is referred for treatment or services, including assistance in transitioning the child to the community after the child's release or discharge from a juvenile facility;

(7) a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or

(8) with permission from the juvenile court, any other individual, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

...

(i) In addition to the authority to release information under Subsection (b)(6), a juvenile probation department may release information contained in its records without leave of the juvenile court pursuant to guidelines adopted by the juvenile board.

Fam. Code § 58.007(b), (i). The submitted information consists of records maintained by the department concerning a juvenile offender. We understand the information at issue relates to a juvenile who was a party to proceedings under the Juvenile Justice Code, title 3 of the Family Code. The department informs us the requestor is not a person or entity authorized to access this information under section 58.007(b). However, as a juvenile probation department, the department has the discretion to release the requested information pursuant to guidelines adopted by the juvenile board. *See id.* § 58.007(i). The department does not inform us it has adopted a rule governing the release of this type of information. Accordingly, we conclude the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(b) of the Family Code.

However, we note the requestor is a representative of the Federal Probation System for the United States District Court (the "probation office"), and thus may have a right of access to some of the information at issue. 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 the

[DPS] about a person.” Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (providing DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides, in part:

[A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by the [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). Thus, this provision may grant the probation office a right of access to CHRI in the submitted information. 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 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 by article 66.001 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 66.001 of the Code of Criminal Procedure defines “[a]dministration 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).

The probation office is a criminal justice agency as defined by section 411.082. *See* Gov’t Code § 411.082(3)(A). We understand the probation office intends to use the information at issue for a criminal justice purpose. Thus, the requestor is generally authorized to obtain CHRI pertaining to the named individual from the department pursuant to sections 411.087(a)(2) and 411.089 of the Government Code. *See id.* §§ 411.083(c), .087(a)(2), .089.

We must address the conflict between the confidentiality of section 58.007(b) of the Family Code and the probation office’s right of access to CHRI under sections 411.087 and 411.089 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 58.007(b) generally makes juvenile law probation records confidential, sections 411.087 and 411.089 of the Government Code give a specific type of requestor, criminal justice agencies, access to particular information, CHRI about a person. *See* Fam. Code § 58.007(b); Gov't Code §§ 411.087, .089. Thus, the statutory right of access granted to the probation office by sections 411.087 and 411.089 of the Government Code prevails over the more general confidentiality provision of section 58.007(b) of the Family Code. Accordingly, the department must release CHRI about the named individual from the submitted information pursuant to sections 411.087 and 411.089 of the Government Code and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007(b) 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jm

Ref: ID# 844654

Enc. Submitted documents

c: Requestor
(w/o enclosures)