



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 17, 2020

Mr. Nicholas Toulet
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City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2020-31654

Dear Mr. Toulet:

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# 858235 (PIR No. M031520-092220).

The City of Midland (the "city") received a request for information pertaining to a named individual. You state the city has released some information to the requestor, including the basic information pertaining to Exhibit F. *See* Gov't Code § 552.108(c) (basic information about an arrest, arrested person, or crime cannot be withheld under section 552.108). We understand the city will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim 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." *Id.* § 552.101. Section 552.101 encompasses information made confidential by federal law. You assert some of the submitted information contains information that was reported to the National Trace Center of the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (the "ATF"). Public Law number 112-55 states, in pertinent part,

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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).

[D]uring the current fiscal year and in each fiscal year thereafter, no funds appropriated under [the Consolidated and Further Continuing Appropriations Act, 2012] or any other [a]ct may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the [ATF] or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor . . . unless such disclosure of such data to an[] . . . entit[y] described in (1) . . . of this proviso would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1) . . . shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State[.]

Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011). You assert the reports you indicated contain Firearm Trace Summaries maintained by the ATF. Upon review, we find the submitted Firearms Trace Summaries are confidential under Public Law number 112-55 and the city must generally withhold this information under section 552.101 of the Government Code. *See Miller v. U.S. Dep't of Justice*, 562 F. Supp. 2d 82, 111 (D.D.C. 2008) (holding Firearms Trace Report properly withheld under Freedom of Information Act exemption 3, which covers records that are exempt from disclosure by statute). However, the requestor is a representative of the Probation Office of the United States District Court for the Western District of Texas (the "probation office"), a federal law enforcement agency. *See* Pub. Law 112-55, 125 Stat. 552. We have no indication the release of the information at issue to this requestor would compromise the identity of any undercover law enforcement officer or confidential informant or interfere with any case under investigation. We note federal law preempts any conflicting state provisions. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation); *see also* U.S. Const. art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law). Therefore, the requestor has a right of access to the submitted Firearms Trace Summaries pursuant to Public Law 112-55, and the city may not withhold this information under section 552.101 of the Government Code on this basis. Accordingly, the city must release the submitted Firearms Trace Summaries to this requestor in their entirety pursuant to Public Law 112-55.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which reads as follows:

(a) [T]he 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). Upon review, we agree the reports in Exhibits B and C were used or developed in investigations of alleged or suspected child abuse by the city's police 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) (defining "abuse" for purposes of chapter 261 of the Family Code). Thus, this information is within the scope of section 261.201(a). 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 determine Exhibits B and C are generally confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, section 261.201(a) provides information encompassed by that section may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." Fam. Code § 261.201(a). We find section 58.008 of the Family Code is applicable state law for the purposes of section 261.201.

Section 552.101 of the Government Code encompasses section 58.008 of the Family Code, which provides, in part, 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 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.

...

(d) Law enforcement records concerning a child may be inspected or copied by:

...

(2) a criminal justice agency, as defined by Section 411.082, Government Code[.]

Id. § 58.008(b), (d)(2); *see 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., ch. 746, § 22. The juvenile must have been at least ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find some of the submitted reports involve juvenile offenders, so as to fall within the scope of section 58.008(b).

However, as noted above, the requestor is a representative of the probation office. Section 58.008(d)(2) of the Family Code gives a “criminal justice agency,” as defined by section 411.082 of the Government Code a right of access to juvenile law enforcement records. *See id.* § 58.008(d)(2). Section 411.082 of the Government Code 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 criminal history record information [(“CHRI”).” Crim. Proc. Code art. 66.001(1). Thus, we find the requestor is requesting the information on behalf of a criminal justice agency as provided by section 58.008(d) of the Family Code. Therefore, the requestor generally has a right of access under section 58.008(d)(2) to the reports that identify the named individual as a juvenile offender and that information may not be withheld from her under section 552.101 in conjunction with section 58.008(b) of the Family Code. Further, although you raise section 552.108 of the Government Code for a portion of this information, we note a statutory right of access prevails over the Act’s general exceptions to public disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Thus, the city may not withhold this information from the requestor under section 552.108 of the Government Code. We also note a statutory right of access to the information prevails over common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with

common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law).

We note report number 150916001, which is subject to section 261.201(a), lists the named individual as a juvenile offender. As noted above, records subject to section 261.201 may be disclosed only under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). Section 58.008(d)(2) is applicable state law allowing disclosure to the requestor. Accordingly, if the city determines the requestor intends to use report number 150916001 for purposes consistent with the Family Code, then the city must release this report pursuant to section 58.008(d)(2) of the Family Code. *See id.* § 261.201(b)-(g), (k), (l) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2. If the city determines the requestor does not intend to use report number 150916001 for purposes consistent with the Family Code, then the city must withhold this report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. In either event, the city must withhold the remaining reports in Exhibits B and C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

We have indicated reports that do not involve the named individual as a suspect or involve the named individual as a suspect who was older than seventeen at the time of the incidents at issue. Because this information does not pertain to the named individual as an offender or the information pertains to the named individual as an adult offender, we conclude the requestor does not have a right of access to this information under section 58.008(d) of the Family Code. *See* Fam. Code § 58.008(d)(2) (providing “[l]aw enforcement records concerning a child may be inspected or copied by . . . a criminal justice agency, as defined by Section 411.082, Government Code[.]”). Therefore, the city must generally withhold the reports we indicated under section 552.101 in conjunction with section 58.008(b).

We note some of the reports we indicated contain CHRI pertaining to the named individual. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] any [CHRI] maintained by [DPS] about a person.” *See* Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part 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.

² We note, because this information does not contain CHRI of the individual named in the request, we do not address whether the requestor has a right of access to CHRI under section 411.087 of the Government Code for this information. *See* Gov’t Code § 411.087(a)(2).

Id. § 411.087(a)(2). We note 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* ORD 655 (discussing limitations on release of CHRI). As noted above, the probation office is a criminal justice agency as defined by section 411.082. We understand the requestor intends to use CHRI for a criminal justice purpose. Consequently, pursuant to section 411.087(a)(2), the city must generally make available to the requestor CHRI pertaining to the named individual. Thus, there is a conflict between the confidentiality provided by section 58.008(b) of the Family Code and the requestor’s right of access under section 411.087(a)(2) 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* Gov’t Code § 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, 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) prevails over the more general confidentiality provision of section 58.008(b). Accordingly, the city must withhold the reports we indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; however, the city must make available to the requestor CHRI pertaining to the named individual pursuant to section 411.087(a)(2) of the Government Code.³

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states Exhibit F relates to a pending criminal investigation or prosecution. Based on this representation, we conclude release of this information will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in

³ As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the city may withhold Exhibit F under section 552.108(a)(1) of the Government Code.

In summary, the city must release the submitted Firearms Trace Summaries to this requestor in their entireties pursuant to Public Law 112-55. The city must withhold Exhibits B and C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; however, the city must release report number 150916001 pursuant to section 58.008(d)(2) of the Family Code if the city determines the requestor intends to use this report for purposes consistent with the Family Code. The city must withhold the reports we indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code; however, the city must make available to the requestor CHRI pertaining to the named individual pursuant to section 411.087(a)(2) of the Government Code. The city may withhold Exhibit F under section 552.108(a)(1) of the Government Code. The city must release the remaining information pursuant to section 58.008(d)(2) 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/jm

Ref: ID# 858235

Enc. Submitted documents

c: Requestor
(w/o enclosures)