



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 15, 2022

Ms. Jessika Williams
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-04604

Dear Ms. Jessika Williams:

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# 927470 (PIR# E000279-110121).

The City of Fort Worth (the "city") received a request for information pertaining to either of two named individuals. You claim 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 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 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). Exhibit B involves juvenile offenders, 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 B under section 552.101 in conjunction with section 58.008(b).

We note the requestor is a representative of the Tarrant County Domestic Relations Office (the “domestic relations office”) and may have a right of access to criminal history record information (“CHRI”) within the information at issue pursuant to section 411.1285 of the Government Code. Section 411.1285(a) of the Government Code provides,

A domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Safety (“DPS”)] [CHRI] that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.

Gov’t Code § 411.1285(a); *see* Fam. Code ch. 203 (governing administration of domestic relations offices). Additionally, section 411.087 of the Government Code provides, in part:

(a) [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.

Gov’t Code § 411.087(a)(2). CHRI means “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.” *Id.* § 411.082(2). Thus, a domestic relations office may receive CHRI from Exhibit B only if the CHRI relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See id.* § 411.1285(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI).

Therefore, if the city determines the CHRI in Exhibit B relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203, the city must release the CHRI pertaining to that individual pursuant to sections 411.087 and 411.1285. *See* Gov't Code §§ 411.083(c), .087(a)(2). Accordingly, we must address the conflict between the confidentiality provided by section 58.008(b) of the Family Code and the requestor's potential right of access under sections 411.087 and 411.1285 to CHRI in Exhibit B. 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 confidential juvenile law enforcement records relating to conduct that occurred before, on or after September 1, 1997, section 411.1285 specifically gives a domestic relations office access to particular information, CHRI, in the specific situation where the CHRI relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203. *See* Fam. Code § 58.008; Gov't Code § 411.1285. Thus, we find the statutory right of access granted to a domestic relations office pursuant to sections 411.087 and 411.1285 prevails over the more general confidentiality provision of section 58.008(b). Additionally, in light of the fact the request in this case may implicate the named individuals' right to privacy because the requestor seeks all records pertaining to the named individuals, we note a statutory right of access also prevails over a claim under common-law privacy.¹ *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). Consequently, if the city determines the information at issue relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203, then the city must release CHRI for that individual from Exhibit B and must withhold the remainder of Exhibit B under section 552.101 in conjunction with section 58.008(b). However, if the city determines the information at issue does not relate to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203, the city must withhold Exhibit B in its entirety under section 552.101 in conjunction with section 58.008(b).

¹ A request for information, such as the portion of the present request for information seeking unspecified law enforcement records, that requires a governmental body to compile an individual's criminal history, implicates that individual's common-law right to privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976) (establishing test for violation of right to privacy under common law in Texas); *cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse file and local police stations and compiled summary of criminal history information).

Section 552.101 of the Government Code also 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 [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). You explain Exhibit C was used or developed in an investigation of alleged or suspected child abuse or neglect by the city's police department under chapter 261 of the Family Code. *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). Upon review, we agree Exhibit C is within the scope of section 261.201(a) and the city must generally withhold Exhibit C under section 552.101 on that basis. However, section 261.201 provides information encompassed by section 261.201(a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *Id.* § 261.201(a). Chapter 411 of the Government Code constitutes "applicable state law" in this instance. Thus, the requestor may have a right of access to CHRI within the information at issue pursuant to sections 411.087 and 411.1285 of the Government Code, discussed above, if the CHRI relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code and if the city determines release of the CHRI is for purposes consistent with the Family Code. *See id.* § 411.1285(a); Fam. Code § 261.201(a); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI); *see also Collins*, 297 S.W.3d at 415. Consequently, if the city determines the information at issue relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 and the city determines release of the CHRI is for purposes consistent with the Family Code, the city must release CHRI for that individual from Exhibit C and must withhold the remainder of Exhibit C under section 552.101 in conjunction with section 261.201(a). However, if the city determines the information at issue does not relate to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 or if the city determines release of the CHRI is not for purposes consistent with the Family Code, the city must withhold Exhibit C in its entirety under section 552.101 in conjunction with section 261.201(a).

In summary, with respect to Exhibit B, if the city determines the information at issue relates to a person who is a party to a proceeding in which the domestic relations office is providing

services permitted under chapter 203, then, pursuant to sections 411.087 and 411.1285 of the Government Code, the city must release CHRI for that individual from Exhibit B and must withhold the remainder of Exhibit B under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. Otherwise, the city must withhold Exhibit B in its entirety under section 552.101 in conjunction with section 58.008(b). With respect to Exhibit C, if the city determines the information at issue relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 and the city determines release of the CHRI is for purposes consistent with the Family Code, then, pursuant to sections 411.087 and 411.1285 of the Government Code, the city must release CHRI for that individual from Exhibit C and must withhold the remainder of Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Otherwise, the city must withhold Exhibit C in its entirety under section 552.101 in conjunction with section 261.201(a).

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,

Lindsay Hale
Assistant Attorney General
Open Records Division

LH/be

Ref: ID# 927470

c: Requestor