



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 28, 2022

Ms. Jessika Williams  
Mr. Siang L. Sang  
Assistant City Attorneys  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102

OR2022-08943

Dear Ms. Williams and Mr. Sang:

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# 939688 (Ref. Nos. P002864-010722 and E001178-012122).

The City of Fort Worth (the "city") received two requests from the same requestor for information pertaining to two named individuals, including eleven specified police reports. The city states it will release some information. The city 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 representative sample of information.<sup>1</sup>

Initially, we note the requestor is a representative of the Texas Department of Family and Protective Services (the "DFPS") and understand she claims she has a right of access to the information at issue pursuant to section 261.105 of the Family Code. Section 261.105 provides, in relevant part:

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<sup>1</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.

(a) All reports received by a local or state law enforcement agency that allege abuse or neglect by a person responsible for a child's care, custody, or welfare shall be referred immediately to the [DFPS].

(b) The [DFPS] shall immediately notify the appropriate state or local law enforcement agency of any report it receives, other than a report from a law enforcement agency, that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect.

Fam. Code § 261.105(a), (b). However, we find the submitted information does not involve child abuse or neglect by either named individual relating to a child to whom the individual is responsible for the care, custody, or welfare. Accordingly, we find the requestor has failed to demonstrate she has a right of access to the submitted information under section 261.105 of the Family Code.

Section 552.101 of the Government Code exempts 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 (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) (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. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining "child" for purposes of title 3 of Family Code). The submitted information involves juvenile offenders, 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 city must generally

withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>2</sup>

As previously noted, the requestor is a representative of the DFPS and may have a right of access to some of the information. Section 411.114(a) of the Government Code states, in pertinent part, the following:

(2) The [DFPS] 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 the [DFPS] 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, the [DFPS] is 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). Accordingly, these provisions may grant the DFPS investigator a right of access to CHRI in report numbers 210604316, 210605235, and 211183007. The requestor does not indicate if the juvenile offender at issue is an alleged perpetrator in a report received by the DFPS of abuse

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<sup>2</sup> Although the requestor is a representative of the DFPS, we note incident report number 200077571 does not contain CHRI for the individuals at issue. Thus, we do not address whether the requestor has a right of access to CHRI in this report pursuant to section 411.114 of the Government Code. *See* Gov’t Code § 411.114(a)(4)(B).

or neglect of a child. Thus, we must rule conditionally. If the juvenile offender listed in report numbers 210604316, 210605235, and 211183007 is not an alleged perpetrator in a report received by the DFPS of abuse or neglect of a child, then the city is not required to release the CHRI pursuant to section 411.114. However, if the juvenile offender in report numbers 210604316, 210605235, and 211183007 is an alleged perpetrator in a report received by the 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 city regarding that individual. *See id.* § 411.114. In that instance, we must address the conflict between the confidentiality provision of section 58.008(b) of the Family Code and the requestor's right of 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); Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Section 58.008(b) generally makes juvenile law enforcement records confidential. However, section 411.114 of the Government Code gives one specific requestor, the DFPS, access to particular information, CHRI, found in records involving particular individuals, alleged perpetrators in a report of abuse or neglect of a child received by the DFPS. *See Gov't Code* § 411.114; *Fam. Code* § 58.008(b). Thus, the statutory right of access granted to the 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. We note a statutory right of access prevails over a claim under 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 Center Point 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). Therefore, if the city determines the juvenile offender listed in report numbers 210604316, 210605235, and 211183007 is an alleged perpetrator in a report received by the DFPS of abuse or neglect of a child, then the city must release the CHRI pertaining to that individual pursuant to section 411.114 of the Government Code and must withhold the remainder of report numbers 210604316, 210605235, and 211183007 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the juvenile offender at issue is not an alleged perpetrator in a report received by the DFPS of abuse or neglect of a child, then the city must withhold report numbers 210604316, 210605235, and 211183007 in their entireties under section 552.101 of the Government Code in conjunction with section 58.008(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,

Katie Stallcup  
Assistant Attorney General  
Open Records Division

AKS/mo

Ref: ID# 939688

Enc. Submitted documents

c: Requestor  
(w/o enclosures)