



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 20, 2022

Mr. Jeremy R. Page
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2022-11437

Dear Mr. Page:

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# 942943 (McKinney ID No. 22-0073).

The McKinney Police Department (the "department"), which you represent, received a request for information pertaining to two named individuals during a specified period of time. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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." 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 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), (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). Section 58.008(b) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We find some of the submitted information involves a child engaged in delinquent conduct or conduct indicating a need for supervision, 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 information at issue is generally confidential under section 58.008(b) of the Family Code. However, we find you have failed to demonstrate any of the remaining information identifies a juvenile suspect or offender for the purposes of section 58.008. Accordingly, the department has not demonstrated the applicability of section 58.008(c) to this information; thus the department may not withhold any of the remaining information under section 552.101 on this basis.

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

[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.

Id. § 261.201(a). Upon review, we find the information we marked relates to investigations of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, this information is generally confidential under section 261.201(a) of the Family Code. However, we note the requestor is a representative of the Child Protective Investigations Division of the Texas Department of Family and Protective Services (“DFPS”). Section 261.105(a) of the Family Code provides, “[a]ll 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 [DFPS].” *See id.* § 261.105(a). The person suspected of child abuse or neglect in these reports was responsible for the child victim’s care, custody, or welfare. *See id.* § 261.001(5)(B) (person responsible for child’s care, custody, or welfare includes a member of child’s family or household as defined by Family Code chapter 71). Accordingly, section 261.105(a) is applicable and the confidentiality of section 261.201(a) does not apply. *See* Attorney General Opinion No. GA-0879 (2011) (law enforcement agency is required to furnish information about alleged child abuse or neglect by person responsible for child’s care, custody, or welfare to DFPS). Although the department also asserts some of this information is subject to section 552.101 in conjunction with common-law privacy, 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 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). Therefore, the requestor generally has a right of access to the information we marked pursuant to section 261.105(a) of the Family Code. Further, we find you have failed to demonstrate the remaining information in Exhibit B-2 is subject to section 261.201(a), and the department may not withhold the remaining information in Exhibit B-2 under section 552.101 on that basis.

We also note section 411.114(a) of the Government Code states, in pertinent part, the following:

(2) [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 [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, [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 the information at issue. The requestor does not specifically state whether the offender in the reports at issue is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child. Thus, we must rule conditionally. If the offender in the reports at issue is not 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 in these reports pursuant to section 411.114. However, if the offender in these reports is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the requestor generally has a right of access to the CHRI regarding that offender pursuant to section 411.114 of the Government Code. *See id.* § 411.114. Accordingly, we must address the conflict between the confidentiality provided by section 58.008(b) of the Family Code and the requestor's right of access under section 261.105(a) of the Family Code and 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* 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). Section 261.105(a) of the Family Code gives a specific type of requestor, DFPS, access to particular information, 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. In addition, section 411.114 of the Government

Code gives a specific type of 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). Conversely, section 58.008(b) of the Family Code generally prohibits any member of the public from obtaining any and all law enforcement records of any incident in which a juvenile is engaged in delinquent conduct or conduct indicating a need for supervision occurring before, on, or after September 1, 2017. *See* Fam. Code § 58.008(b). Thus, we find the statutory right of access granted to the requestor by section 261.105(a) of the Family Code and section 411.114 of the Government Code prevails over the more general confidentiality provision of section 58.008(b) of the Family Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the remaining information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must release the information we marked under section 261.105(a) of the Family Code. If the offender in the reports we marked is not an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must withhold the reports we marked in their entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If the offender in the reports we marked reports is an alleged perpetrator in a report received by DFPS of abuse or neglect of a child, then the department must release the CHRI regarding that offender pursuant to section 411.114 of the Government Code, but must withhold the remaining information in the reports under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must withhold the remaining information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.¹

¹ As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Fam. Code § 261.105(a); Gov't Code § 411.114. Therefore, if the department receives another

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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/jxd

Ref: ID# 942943

Enc. Submitted documents

c: Requestor
(w/o enclosures)

request for this information from a different requestor, the department must again seek a ruling from this office.