



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2022

Mr. Jeremy Anato-Mensah
Assistant City Attorney
City of Fort Worth
200 Texas Street 3rd Floor
Fort Worth, Texas 76102

OR2022-20206

Dear Mr. Anato-Mensah:

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# 959269 (City PIR No. E002533-041822).

The Fort Worth Police Department (the "department") received a request for all records involving a named individual and a specified address during a specified time period. 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.

Initially, we note the requestor is a representative of the Texas Department of Family and Protective Services (DFPS) and 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:

- (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 [DFPS].
- (b) [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 the 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(b) of the Family Code, which provides as follows:

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)-(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 information involves juvenile offenders, so as to fall within the scope of section 58.008(b). The exceptions in section 58.008 do not appear to apply. Therefore, the department must generally withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.¹ We note section 58.008(b) does not apply to law enforcement records that relate to a juvenile involved only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find the remaining information at issue does not involve a juvenile suspect, offender, or defendant engaging in delinquent conduct or conduct indicating a need for supervision for the purposes of section 58.008. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

As noted above, the requestor is with DFPS. Section 411.114(a) of the Government Code states, in pertinent part, the following:

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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 juvenile offenders at issue are alleged perpetrators in a report received by DFPS of abuse or neglect of a child. Thus, we must rule conditionally. If the juvenile offenders at issue are not alleged perpetrators in a report received by DFPS of abuse or neglect of a child, then the department is not required to release the CHRI pursuant to section 411.114. However, if the juvenile offenders are alleged perpetrators in a report received by 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 department regarding those individuals. *See id.* § 411.114. In that situation, we must address the conflict between confidentiality under section 58.008(b) of the Family Code and 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). While section 58.008(b) generally makes juvenile law enforcement records confidential, section 411.114 of the Government Code gives one specific 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). Thus, the statutory right of access granted to 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. Although you also assert the submitted information is confidential under 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, if the department determines the juvenile offenders at issue are alleged perpetrators in a report received by DFPS of abuse or neglect of a child, then the department must release the CHRI pertaining to those juvenile offenders pursuant to section 411.114 of the Government Code, but must withhold the remaining information we have indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the juvenile offenders are not alleged perpetrators in a report received by DFPS of abuse or neglect of a child, then the department must withhold the information we have indicated in its entirety under section 552.101 of the Government Code in conjunction with 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 intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). Upon review, we conclude some of the remaining information at issue meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the public citizens' dates of birth in the remaining information and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is

excepted from public release.² *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the department determines the juvenile offenders at issue are alleged perpetrators in a report received by DFPS of abuse or neglect of a child, then the department must release the CHRI pertaining to those juvenile offenders pursuant to section 411.114 of the Government Code, but must withhold the remaining information we have indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the juvenile offenders are not alleged perpetrators in a report received by DFPS of abuse or neglect of a child, then the department must withhold the information we have indicated in its entirety under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must withhold the public citizens' dates of birth in the remaining information and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 959269

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).