



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2011

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-12953

Dear Ms. Villarreal:

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# 429253 (Reference #: LGL 11-828).

The City of Waco (the "city") received a request for a specified police report involving two named individuals.¹ You claim that 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. This exception encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be

¹You provide documentation showing the city sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.022(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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 find the submitted information was used or developed in an investigation under chapter 261 of the Family Code and falls within the scope of section 261.201. *See id.* § 261.001(1)(E) (“abuse” for purposes of chapter 261 of the Family Code includes sexual assault under section 22.011); *see also* Penal Code § 21.11(c)(1) (defining “child” for purposes of Penal Code section 22.011 as person under 17 years of age). Thus, this information is generally confidential under section 261.201 of the Family Code. We note that the requestor is a representative of the Texas Department of Family and Protective Services (“DFPS”). Thus, section 411.114 of the Government Code is applicable to the submitted information. Section 411.114(a) of the Government Code states in pertinent part:

(2) The [DFPS] shall obtain from the [Department of Public Safety (“DPS”)] criminal history record information [“CHRI”] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in 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). 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." *Id.* § 411.082(2). We note that one of the named individuals is listed as a suspect in the submitted report. Thus, the requestor is authorized to obtain CHRI from the city. *Id.* § 411.114. Consequently, the city must generally release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, but must generally withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note section 58.007 of the Family Code may be applicable to the information at issue. Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential the law enforcement records of a juvenile who, on or after September 1, 1997, engaged in delinquent conduct or conduct indicating a need for supervision. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from 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 Subchapter B, D, and E.

Id. § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Here, the submitted information identifies a juvenile suspect alleged to have engaged in delinquent conduct that

occurred after September 1, 1997. Thus, section 58.007(c) is applicable to the submitted information. As previously noted, the requestor is a representative of DFPS, thus, section 411.114 of the Government Code is applicable to the submitted information. Gov't Code § 411.114(a)(2), (a)(4). Accordingly, the requestor in this instance is authorized to obtain CHRI from the city. Therefore, we must address the conflict between section 58.007 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 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 Nos. 598 (1991), 583 (1990), 451 (1986). We find section 411.114 of the Government Code is the more specific statute in this instance. Section 411.114 gives one specific requestor, DFPS, access to particular juvenile information, CHRI, found in one kind of juvenile record, a report of abuse or neglect of a child. Conversely, section 58.007(c) 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 on or after September 1, 1997. *See* Gov't Code § 411.114(a)(2); Fam. Code § 58.007. Thus, we conclude that section 411.114 is an exception to the confidentiality of section 58.007(c) for the CHRI it covers. Consequently, the city must release the information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, but must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.. *See* ORD 451 (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

In summary, the city must release CHRI pursuant to section 411.114 of the Government Code. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a small dot at the end.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 429253

Enc. Submitted documents

cc: Requestor
(w/o enclosures)