



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2013

Ms. Teresa J. Brown
Senior Open Records Assistant
Open Records
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2013-20224

Dear Ms. Brown:

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# 506159 (Tracking #RIVY090713).

The Plano Police Department (the "department") received a request for a specified police report. 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 information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(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 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 of alleged child abuse, so as to fall within the scope of section 261.201(a). *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also* Penal Code § 22.04 (defining “child” for purposes of injury to a child as a person 14 years of age or younger). Thus, the submitted information is generally confidential under section 261.201 of the Family Code. We note, however, the requestor is a representative of the Arizona Department of Public Safety (“ADPS”). Section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). In this instance, section 58.007 of the Family Code, and its predecessor statute, section 51.14 of the Family Code and section 411.087 of the Government Code, may constitute “applicable state law” for purposes of section 261.201(a).

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. *Id.* § 58.007(c). Although you assert the submitted information is subject to section 58.007 of the Family Code, we note section 58.007 is inapplicable because the conduct at issue occurred in 1991. Former section 51.14 of the Family Code is the applicable provision in this instance. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Former section 51.14(d) was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided, in relevant part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). A “child” is defined as a person who was ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Because the submitted information pertains to juvenile delinquent conduct that occurred prior to January 1, 1996, we conclude that the release of the submitted information is governed by former section 51.14(d) of the Family Code.

Section 51.14(d)(3) specifically authorizes the release of juvenile records to “law-enforcement officers when necessary for the discharge of their official duties.” As previously noted, the requestor is a representative of ADPS. Accordingly, if the department determines the requestor is in fact a “law-enforcement officer” who is seeking the information because it is necessary for the discharge of her official duty, then the requestor has a right of access to the submitted information under section 51.14(d)(3), which constitutes “applicable state law” for purposes of section 261.201(a). Otherwise, the requestor has no right of access to the submitted information under section 51.14.

However, as noted above, the submitted information is also subject to section 261.201(a) of the Family Code. Records subject to section 261.201 may be disclosed under applicable state law and for purposes consistent with the Family Code. *See id.* 261.201(a). Section 51.14 is applicable state law. However, the department must also determine whether releasing this report to the requestor is consistent with the Family Code. Therefore, if the department determines the requestor does not have a right of access to the submitted information under section 51.14(d)(3), then the submitted information is generally confidential pursuant to section 552.101 of Government Code in conjunction with section 261.201 of the Family Code. *See Open Records Decision Nos. 655 (1997), 440 at 2 (1986)* (construing predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information). However, if the department determines the requestor has a right of access to the submitted information under section 51.14(d)(3) and intends to use the report for purposes consistent with the Family Code, then the department must generally release the submitted information to the requestor.

In the event the requestor has a right of access to the submitted information under section 51.14(d)(3), we note the information at issue contains driver’s license information subject to section 552.130 of the Government Code.¹ Section 552.130 provides information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1). Accordingly, the department must generally withhold the marked driver’s license information under section 552.130 of the Government Code. Therefore, we must address the conflict between the access provided under section 51.14(d)(3) of the Family Code and the confidentiality provided under section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific

¹The 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).*

provision prevails over the general. See *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *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, section 51.14(d)(3) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. Although a specific statutory right of access prevails over general exceptions to disclosure under the Act, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we find section 552.130 is more specific than the general right of access provided by section 51.14(d)(3). Accordingly, in the event the requestor has a statutory right of access to the submitted information pursuant to section 51.14(d)(3) of the Family Code and if the department determines the requestor intends to use the submitted information for purposes consistent with the Family Code, the department must withhold the marked driver’s license information under section 552.130 of the Government Code, and must release the remaining information to the requestor.

If the department determines the requestor does not have a right of access to the submitted information under section 51.14(d)(3), then the requestor may have a right of access to criminal history record information (“CHRI”) in the submitted report. Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any [CHRI] maintained by the [Texas Department of Public Safety] about a person.” See Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Texas Department of Public Safety] [CHRI] maintained by the [Texas Department of Public Safety] 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.

Id. § 411.087(a)(2). We note CHRI is defined as “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). However, a criminal justice agency that receives CHRI from another criminal justice agency pursuant to section 411.087(a)(2) may only receive such information for a criminal justice purpose. See *id.* §§ 411.083(c), .087(b); see also ORD 655 (discussing limitations on release of CHRI). Thus, if the requestor in this instance represents a “criminal justice agency” and seeks the information for purposes consistent with the Family Code, then she is authorized to obtain CHRI from the department pursuant to

section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See* Gov't Code §§ 411.083(c), .087(a)(2); *see also* Fam. Code § 261.201(a).

Section 411.082 defines a "criminal justice agency" as including "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." *Id.* § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI]." Code Crim. Proc. art. 60.01(1). Although it appears ADPS is engaged in the administration of criminal justice under chapter 411, we are unable to determine whether the requestor intends to use the CHRI for a criminal justice purpose. We also are unable to determine if she intends to use the information for purposes consistent with the Family Code. Consequently, if the department determines this particular requestor does not have a right of access to the submitted information under section 51.14(d)(3) and does not intend to use CHRI for a criminal justice purpose or for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If the department determines this particular requestor intends to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then, pursuant to section 411.087(a)(2), the department must generally make available to the requestor 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. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

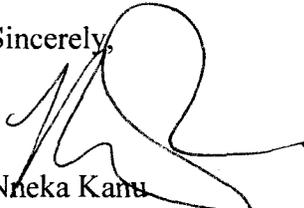
In summary, in the event the department determines the requestor has a statutory right of access to the submitted information pursuant to section 51.14(d)(3) of the Family Code and intends to use the submitted information for purposes consistent with the Family Code, the department must withhold the marked driver's license information under section 552.130 of the Government Code, and must release the remaining information to the requestor. If the department determines this particular requestor does not have a right of access to the submitted information under section 51.14(d)(3), but intends to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then, pursuant to section 411.087(a)(2), the department must generally make available to the requestor 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. In that instance, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines this particular requestor does not have a right of access to the submitted information under section 51.14(d)(3) of the Family Code and

does not intend to use CHRI for a criminal justice purpose or for purposes consistent with the Family Code, then the department must withhold the submitted information in its entirety 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written over a horizontal line.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 506159

Enc. Submitted documents

c: Requestor
(w/o enclosures)