



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2014

Mr. Daniel Ortiz
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-00188

Dear Mr. Ortiz:

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# 509850 (El Paso ID# 13-1026-3608/W001694-100913).

The El Paso Police Department (the "department") received a request for information pertaining to three specified cases. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

After review of the submitted information, we find you have failed to demonstrate how any portion of the submitted information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the submitted information under section 552.101 on the basis of constitutional privacy.

Section 552.101 of the Government Code also encompasses information other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201 provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 report number 94-136264 was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Accordingly, we find this information is subject to chapter 261 of the Family Code. As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude report number 94-136264 is confidential pursuant to section 261.201 of the Family Code and must generally be withheld in its entirety under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, we note the requestor is a representative of the State of Washington Department of Social and Health Services and, thus, may have a right of access to some of the information at issue. Section 411.089(a) of the Government Code provides, "[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information ["CHRI"] maintained by the [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:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] [CHRI] maintained by the [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). 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). Thus, the submitted information in this instance contains CHRI. 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* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). Thus, to the extent the requestor represents a “criminal justice agency,” the requestor 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).

A “criminal justice agency” is defined in part as “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.” Gov’t Code § 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 of the Code of Criminal Procedure defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, 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].” Crim. Proc. Code art. 60.01(1).

In this case, as noted above, the requestor is a representative of the State of Washington Department of Social and Health Services. We cannot determine whether he is a representative of a criminal justice agency, or whether he intends to use the CHRI for a criminal justice purpose and for purposes consistent with the Family Code. Accordingly, we must rule conditionally. If the department determines the requestor is requesting the information on behalf of a criminal justice agency for purposes of chapter 411 of the Government Code and determines the requestor seeks the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, we conclude the department must make available to the requestor any CHRI from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention,

conviction, or other formal charges and their dispositions. You raise section 552.101 in conjunction with common-law privacy and section 552.108 of the Government Code for this information. We note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Further, statutory access provisions generally prevail over the common law. *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 it directly conflicts with common-law principle); *see also Cash Am. Intern. Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute depriving person of common-law right will not be extended beyond its plain meaning or applied to cases not clearly within its purview). Therefore, we do not address your arguments under section 552.101 in conjunction with common-law privacy and section 552.108 of the Government Code for this information. In that instance, the department must withhold the remaining information in report number 94-136264 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, if the department determines the requestor either is not a representative of a criminal justice agency for purposes of chapter 411 of the Government Code or does not seek access to the information at issue for a criminal justice purpose and for purposes consistent with the Family Code, then the department must withhold report number 94-136264 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. You assert the remaining information is subject to this section. However, we note section 58.007 is inapplicable in this instance because the conduct at issue occurred in 1994 and 1995. Accordingly, we will address your argument under former section 51.14 of the Family Code.

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). Report numbers 94-006150 and 95-276169 concern juvenile conduct that occurred prior to January 1, 1996. Further, the requestor does not fall within one of the categories in former section 51.14(d) under which inspection of the records would be permitted. Accordingly, report numbers 94-006150 and 95-276169 are generally confidential under former section 51.14(d) of the Family Code.

However, as previously noted, the requestor is a representative of the State of Washington Department of Social and Health Services. We are unable to determine whether the requestor is a representative of a criminal justice agency or whether the requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the department determines the requestor either is not a representative of a criminal justice agency for purposes of chapter 411 or does not intend to use the CHRI for a criminal justice purpose, then the requestor does not have a right of access to the submitted CHRI pursuant to chapter 411, and the department must withhold report numbers 94-006150 and 95-276169 in their entireties under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. However, if the department determines (1) the requestor is a representative of a criminal justice agency for purposes of chapter 411 and (2) the requestor intends to use the CHRI for a criminal justice purpose, then pursuant to section 411.087(a)(2) of the Government Code, the department must generally make available to the requestor the CHRI from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. You also raise section 552.101 in conjunction with common-law privacy and section 552.108 of the Government Code for this information. As previously noted, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* ORDs 613 at 4, 451. Further, statutory access provisions generally prevail over the common law. *See Collins*, 297 S.W.3d at 415; *see also Cash Am. Intern.*, 35 S.W.3d at 16. Therefore, we do not address your arguments under section 552.101 in conjunction with common-law privacy and section 552.108 of the Government Code for this information. The department must withhold the remaining information in report numbers 94-006150 and 95-276169 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. In that instance, there is a conflict between the confidentiality provided by former section 51.14(d) of the Family Code and the requestor’s right of access under section 411.087(a)(2) 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). In this instance, although former section 51.14(d) generally makes juvenile law enforcement records confidential, section 411.087(a)(2) of the Government Code gives specific types of requestors, criminal justice agencies, access to particular information, CHRI, for a criminal justice purpose. Thus, the statutory right of access granted to the requestor by section 411.087(a)(2) of the Government Code prevails over the more general confidentiality provision of former section 51.14(d) of the Family Code. Therefore, notwithstanding former section 51.14(d), if the department determines (1) the requestor is a representative of a criminal justice agency for purposes of chapter 411 and (2) the requestor intends to use the CHRI for a criminal justice purpose, then pursuant to section 411.087(a)(2) of the Government Code, the department must make available to this requestor information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions from report numbers 94-006150 and 95-276169 pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information in report numbers 94-006150 and 95-276169 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

In summary, in regards to report number 94-136264, if the department determines the requestor is requesting the information on behalf of a criminal justice agency for purposes of chapter 411 of the Government Code and determines the requestor seeks the CHRI for a criminal justice purpose and for purposes consistent with the Family Code, then the department must release the information at issue that is otherwise subject to section 261.201 and 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 in report number 94-13624 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the department determines the requestor either is not a representative of a criminal justice agency for purposes of chapter 411 of the Government Code or does not seek access to the information at issue for a criminal justice purpose and for purposes consistent with the Family Code, then the department must withhold report number 94-13624 in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In regards to report numbers 94-006150 and 95-276169, if the department determines the requestor either is not a representative of a criminal justice agency for purposes of chapter 411 or does not intend to use the CHRI for a criminal justice purpose, the department must withhold report numbers 94-006150 and 95-276169 in their entireties under section 552.101 of the Government Code in

conjunction with former section 51.14 of the Family Code. However, if the department determines (1) the requestor is a representative of a criminal justice agency for purposes of chapter 411 and (2) the requestor intends to use the CHRI for a criminal justice purpose, then the department must make available to this requestor information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information in report numbers 94-006150 and 95-276169 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code¹

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 509850

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note that, because this requestor has a special right of access to some of the information being released, the department must again ask this office for a decision if it receives another request for this information from a different requestor.