



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2014

Ms. Rachel L. Lindsay
Counsel for the City of McKinney
Brown & Hofmeister
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-00713

Dear Ms. Lindsay:

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# 510591.

The McKinney Police Department (the "department"), which you represent, received a request for all records regarding two named individuals and a specified address during a specified time period. You inform us you have released the majority of the requested information to the requester. 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 submitted information contains a court order of restricted access. The order was entered in accordance with section 58.203 of the Family Code, which states the Texas Department of Public Safety ("DPS") shall certify that juvenile law enforcement records are subject to automatic restriction of access under certain circumstances. Fam. Code § 58.203. Section 58.204(b) of the Family Code provides in part:

...

(b) On certification of records in a case under Section 58.203, the [DPS] may permit access to the information in the juvenile justice information system relating to the case of an individual only:

(1) by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; or

(2) for research purposes, by the Texas Juvenile Probation Commission, the Texas Youth Commission, or the Criminal Justice Policy Council.

Id. § 58.204(b). Moreover, section 58.207 of the Family Code provides in part:

(a) On certification of records in a case under Section 58.203, the juvenile court shall order:

(1) that the following records relating to the case may be accessed only as provided by Section 58.204(b):

...

(E) records maintained by a law enforcement agency[.]

(b) On receipt of an order under Subsection (a)(1), the agency maintaining the records:

(1) may allow access only as provided by Section 58.204(b); and

(2) shall respond to a request for information about the records by stating that the records do not exist.

Id. § 58.207(a)(1)(E), (b). In this instance, the requestor is not one of the entities listed in section 58.204(b) to which access is allowed. Therefore, pursuant to the submitted order of restricted access and section 58.207(b) of the Family Code, the department must respond to this request for information by stating a portion of the requested information does not exist.

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 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 58.007. Section 58.007 provides, in relevant part:

(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 Subchapters B, D, and E.

Id. § 58.007(c). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time the conduct occurred. *Id.* § 51.02(2). Upon review, we agree the remaining information at issue involves juveniles, including one of the named individuals, engaged in delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct”). It does not appear any of the exceptions in section 58.007 apply. Therefore, the remaining information at issue is confidential under section 58.007(c) of the Family Code and must generally be withheld in its entirety under section 552.101 of the Government Code.

However, the requestor in this instance is an investigator with Texas Department of Family and Protective Services (“DFPS”). Section 411.114(a) of the Government Code states in pertinent part:

(2) [DFPS] shall obtain from the [DPS] criminal history record information [“CHRI”] maintained by the [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). Thus, these provisions may grant the DFPS investigator a right of access to CHRI in the remaining information at issue. In this case, the requestor states the information is being requested for the purpose of a Child Protective Services investigation but does not specifically state whether the named individual who is the subject of the submitted information is an alleged perpetrator in a DFPS report of abuse or neglect of a child. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the remaining information, and we must rule conditionally. Therefore, if the requestor is not investigating the named individual at issue as an alleged perpetrator in a DFPS report of abuse or neglect of a child, the CHRI is not subject to release to this requestor under section 411.114, and the remaining information at issue must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. However, if the requestor is investigating the named individual at issue as an alleged perpetrator in a DFPS report 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 that individual. In that instance, we must address the conflict between section 58.007(c) of the Family Code and section 411.114 of the Government Code.

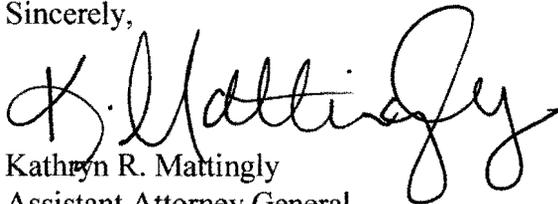
Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the 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). In this instance, while section 58.007(c) generally makes juvenile law enforcement records confidential, section 411.114 of the Government Code gives one specific requestor, the 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 § 58.007. Thus, the statutory right of access granted to the DFPS by section 411.114 of the Government Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Therefore, if the department determines the remaining information at issue the investigator is seeking relates to an alleged perpetrator in a DFPS report of abuse or neglect of a child, the department must release the 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. The department must withhold the rest of the information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, in accordance with the submitted order of restricted access and section 58.207(b) of the Family Code, the department must respond to the request by stating a portion of the requested information does not exist. If the department does not determine the remaining information at issue relates to an alleged perpetrator in a DFPS report of abuse or neglect of a child, then the remaining information at issue must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the department determines the remaining information at issue relates to an alleged perpetrator in a DFPS report of abuse or neglect of a child, the department must release the 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. In that case, the department must withhold the rest of the information at issue under section 552.101 of the Government Code in conjunction with section 58.007(c) 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 510591

Enc. Submitted documents

c: Requestor
(w/o enclosures)