



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2014

Ms. Andrea D. Russell
Counsel for City of Saginaw
Taylor Olson Adkins Sralla Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2014-03744

Dear Ms. Russell:

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# 515697.

The Saginaw Police Department (the "department") received a request for call reports pertaining to two specified individuals for a specified period of time. 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 58.007 of the Family Code, which provides, in part, 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). Upon review, we find the submitted information constitutes law enforcement records involving a child engaged in delinquent conduct that occurred after September 1, 1997. Thus, this information 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 a representative of the Texas Department of Family and Protective Services (“DFPS”). Section 411.114(a) of the Government Code provides, in part, as follows:

(2) [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 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). In this instance, the requestor states the requested information relates to an alleged perpetrator in a report received by DFPS alleging that the person has abused, neglected, or exploited a child. Thus, section 411.114 of the Government Code is applicable to the CHRI in the submitted information. Accordingly, the requestor in this instance is authorized to obtain CHRI from the department. Therefore, we must address the conflict between section 58.007(c) of the Family Code and section 411.114 of the Government Code.

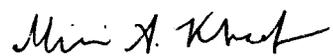
Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See id.* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the 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. Consequently, the department must release the CHRI to this requestor pursuant to section 411.114 of the Government Code. The department must withhold the remaining information 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,

A handwritten signature in cursive script, appearing to read "Miriam A. Khalifa".

Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 515697

Enc. Submitted documents

c: Requestor
(w/o enclosures)