



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2014

Ms. Lisa D. Mares
Counsel for the City of McKinney
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-07375

Dear Ms. Mares:

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# 522757.

The City of McKinney (the "city"), which you represent, received a request for calls for service and police reports pertaining to two specified addresses during 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 261.201 of the Family Code, which provides, in pertinent part, as follows:

- (a) Except as provided by Section 261.203, the 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 a portion of the submitted information, which we have marked, was used or developed by the city's police department in investigations of alleged or suspected child abuse. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault under Penal Code sections 22.011); *see also id.* § 101.003(a) (defining "child" for purposes of section 261.201 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). Thus, the information we have marked falls within the scope of section 261.201 of the Family Code. Accordingly, we find this information is confidential under section 261.201 of the Family Code and must generally be withheld under section 552.101 of the Government Code on that basis.¹ *See* Fam. Code § 261.201(a). We note, however, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." *See id.* Chapter 411 of the Government Code constitutes "applicable state law" in this instance. We note the requestor is an investigator for the Child Protective Services Division of the Department of Family and Protective Services ("DFPS").

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 a report 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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 the subjects of the reports are listed as suspects for child abuse. Thus, the requestor is authorized to obtain CHRI from the city regarding the individuals who are the subject of the requested reports at issue. *See id.* § 411.114. 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 pursuant to section 411.114 of the Government Code, but must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Family Code also encompasses section 58.007(c) of the Family Code, which provides as follows:

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). For purposes of section 58.007(c), a "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we agree a portion of the remaining information, which we have marked, consists of law enforcement records involving juvenile delinquent

conduct or conduct indicating a need for supervision occurring after September 1, 1997 and is, therefore, subject to section 58.007(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct in need of supervision” for purposes of title 3 of the Family Code). It does not appear any of the exceptions in section 58.007 apply. *See id.* § 58.007(e)-(I). Therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must generally be withheld under section 552.101 of the Government Code. However, as previously noted, the requestor is a representative of DFPS. Thus, section 411.114 of the Government Code is applicable to the remaining CHRI at issue. *See 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(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 general provision is later enactment and manifest intent is that general provision prevails); *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 city must release the CHRI to the requestor pursuant to section 411.114 of the Government Code, but must withhold the remaining information we have marked under section 58.007 of the Family Code.

In summary, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and section 58.007 of the Family Code, but must release the CHRI pursuant to section 411.114 of the Government Code.² The city must release the remaining information.

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.

²Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the city must again seek a decision from this office if it receives a request for this information from a different requestor.

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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 522757

Enc. Submitted documents

c: Requestor
(w/o enclosures)