



January 23, 2015

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-01372

Dear Mr. Trevino:

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# 551093 (City PIR No. W038079).

The Fort Worth Police Department (the "department") received a request for all information related to a named individual, including ten specified police reports. You state the department has released some information to the requestor. You also state the department has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ 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. This section encompasses information protected by other statutes such as section 58.007 of the Family Code, which provides in pertinent part:

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

(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 of the Family Code). 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 at the time of the conduct at issue. *See id.* § 51.02(2). Upon review, we find the information you have marked involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). The exceptions in section 58.007 do not apply in this instance.² *See id.* § 58.007(e)-(I). Accordingly, the department must generally withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You claim the remaining information you have marked pertains to juvenile conduct that occurred prior to January 1, 1996. Section 552.101 of the Government Code also encompasses former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-Fourth Legislature, former section 51.14 provided for the confidentiality of juvenile law enforcement records. *See Open Records Decision No. 181 (1977)* (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996, are governed by former section 51.14(d),

²We note the requestor is seeking information about an individual who is listed as an adult suspect in the reports at issue. The requestor is not seeking information about the individuals named as juvenile suspects or offenders in the reports, so as to implicate the access provided in section 58.007(e) of the Family Code. *See Fam. Code § 58.007(e)* (providing “[l]aw enforcement records and files concerning a child may be inspected or copied by . . . a criminal justice agency as that term is defined by Section 411.082, Government Code[.]”).

which 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 pertinent 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(d) (repealed 1995). A “child” is defined as a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find the remaining information pertains to juvenile conduct that occurred prior to January 1, 1996, and pertains to individuals who were ten years of age or older and under seventeen years of age at the time of the offense. Further, the requestor does not fall within the categories in former section 51.14(d) under which inspection of the records would be permitted. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Therefore, we find former section 51.14(d) is applicable to the remaining information. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating a need for supervision engaged in by child). Thus, the department must generally withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

However, the requestor is a representative of the Probation and Pretrial Services Office of the United States District Court for the Northern District of Texas (the “probation office”) and may have a right of access to some of the information at issue. 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 criminal history record information [(“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). Thus, the information at issue 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).

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.” 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 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].” Crim. Proc. Code art. 60.01(1). We understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* Although it appears the probation office is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, the department must withhold the information you have marked in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, and the remaining information you have marked in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. However, if the department determines the requestor intends to use the CHRI for a criminal justice purpose, 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, and must withhold the remainder of the information you have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code and former section 51.14 of the Family Code. In that instance, there is a conflict between the confidentiality provided by section 58.007(c) of the Family Code and 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 section 58.007(c) of the Family Code and former section 51.14(d) of the Family Code generally make 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 provisions of section 58.007(c) of the Family Code and former section 51.14(d) of the Family Code. Additionally, in light of the fact the request in this case may implicate the named individual's right to privacy because the requestor seeks all department records pertaining to the named individual, we note a statutory right of access also prevails over a claim under common-law privacy.³ 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 statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, notwithstanding section 58.007(c) and former section 51.14(d), if the department determines 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 from the submitted information pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and former section 51.14(d) of the Family Code.

In summary, if the department determines the requestor intends to use the CHRI from the submitted information for a criminal justice purpose, then the department must make the CHRI available to this requestor from the submitted information pursuant to section 411.087(a)(2) of the Government Code and must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code and former section 51.14(d) of the Family Code. However, if the department determines the requestor does not intend to use the CHRI at issue for a criminal justice purpose, the department must withhold the information you have

³A request for information, such as the present request for information, that requires a governmental body to compile an individual's criminal history, implicates that individual's common-law right to privacy. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976) (establishing test for violation of right to privacy under common law in Texas); cf. *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse file and local police stations and compiled summary of criminal history information).

marked in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, and the remaining information you have marked in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14(d) 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 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 551093

Enc. Submitted documents

c: Requestor
(w/o enclosures)