



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2015

Ms. Paige Mebane  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2015-07001

Dear Ms. Mebane:

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# 559657 (ORR# W040023).

The Fort Worth Police Department (the "department") received a request for all information pertaining to a named individual, including thirteen specified offense reports. 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 you have submitted only two of the thirteen requested reports. To the extent any additional information responsive to the request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. 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). The submitted reports pertain to incidents that occurred prior to January 1, 1996, and each report lists an arrestee who was 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 one of the categories in former section 51.14(d) under which inspection of the records would be permitted. Accordingly, the submitted reports are generally confidential under former section 51.14(d) of the Family Code.

However, the requestor is a representative of the Probation and Pretrial Service 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 submitted reports contain 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].” Code Crim. Proc. 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 of the Government Code, 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, then the department must withhold the submitted reports 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 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 requestor has a general right of access to information in the otherwise confidential reports 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, 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 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 each of the submitted reports. The department must withhold the remaining information in the submitted reports under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

In summary, if the department determines 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 CHRI available to this requestor from the submitted reports and must withhold the remaining information in the submitted reports under section 552.101 of the Government Code in conjunction with 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 submitted information 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 559657

Enc. Submitted documents

c: Requestor  
(w/o enclosures)