



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 24, 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

OR2015-20047

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# 580530 (ORR# W044061).

The City of Fort Worth (the "city") received a request for all police reports pertaining to three named individuals. You state the city is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You also state the city will redact certain criminal history record information pursuant to the previous determination issued to the city in Open Records Letter No. 2013-22304 (2013).² You state the city has released some of the requested information. You claim some of the submitted information is excepted from

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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

²Open Records Letter No. 2013-22304 is a previous determination issued to the city authorizing it to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code without the necessity of requesting an attorney general decision.

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. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads 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). 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 reported conduct. *See id.* § 51.02(2). You state the submitted information is confidential under section 58.007(c) of the Family Code. Upon review, we find report number 06-77455 and service number 98472970 involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the city must generally withhold report number 06-77455 and service number 98472970 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, we find the remaining information does not list a juvenile as a suspect, offender, or defendant. Thus, you have not demonstrated how the remaining information involves juvenile conduct for purposes of section 58.007(c) of the Family Code, and the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

However, we note the requestor is a representative of the Tarrant County Domestic Relations Office (the “office”) and she states she has been appointed to conduct a court-ordered social

study regarding one of the individuals at issue in report number 06-77455 and service number 98472970. Thus, the requestor may have a right of access to some of the information at issue. Section 411.1285(a) of the Government Code provides, “[a] domestic relations office created under Chapter 203, Family Code, is entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”)] that relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under Chapter 203, Family Code.”³ See Act of May 29, 2015, 84th Leg., R.S., ch. 1252, § 3.07, 2015 Tex. Sess. Law Serv. 4221, 4238 (Vernon) (to be codified as an amendment to Gov’t Code § 411.1285(a)); see also Fam. Code ch. 203 (governing administration of domestic relations offices). 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 or Subchapter E-1 to obtain from [DPS] [CHRI] maintained by [DPS] 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.

Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337 - 4338 (Vernon) (to be codified as an amendment to Gov’t Code § 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 Gov’t Code § 411.082(2). Report number 06-77455 and service number 98472970 contain CHRI. However, a domestic relations office may receive CHRI only if the information relates to a person who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. See *id.* § 411.1285(a); see also Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, when read together, sections 411.087 and 411.1285(a) of the Government Code may provide the office a right of access to CHRI in report number 06-77455.

As noted above, the requestor states she has been assigned to conduct a court-ordered social study involving the named individuals. Therefore, report number 06-77455 and service number 98472970 may relate to a person who is a party to a proceeding in which a domestic relations office is providing services permitted under chapter 203 of the Family Code, and the requestor may generally have a right of access to CHRI contained in this information

³A “domestic relations office” is defined as “a county office that serves families, county departments, and courts to ensure effective implementation of this title.” Fam. Code § 203.001(2).

relating to a party to the proceeding. Thus, if the city determines the requestor is with a domestic relations office created under chapter 203 of the Family Code that is providing services to a party to a proceeding under chapter 203, then the city must generally make available to the domestic relations office the CHRI in report number 06-77455 and service number 98472970 relating to a party to the proceeding. We note a specific statutory right of access prevails over the doctrine of common-law privacy. *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). Accordingly, we must address the conflict between the confidentiality provided by section 58.007(c) of the Family Code and the requestor's potential right of access under sections 411.087 and 411.1285(a) of the Government Code to CHRI in report number 06-77455 and service number 98472970 relating to a party to the proceeding.

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, while section 58.007(c) generally makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, section 411.1285(a) gives one specific entity, a domestic relations office, access to particular information, CHRI, in the specific situation where the CHRI is found in records involving an individual who is a party to a proceeding in which the domestic relations office is providing services permitted under chapter 203 of the Family Code. *See Fam. Code § 58.007; Gov't Code § 411.1285(a)*. Thus, we find the statutory right of access granted to a domestic relations office under section 411.1285 of the Government Code prevails over the more general confidentiality provision of section 58.007(c). Consequently, if the city determines the requestor is with a domestic relations office created under chapter 203 of the Family Code, and report number 06-77455 and service number 98472970 relate to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203, then the city must release CHRI pertaining to the named individual from that information, and must withhold the remainder of that information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the city determines the requestor is not with a domestic relations office created under chapter 203 of the Family Code, or report number 06-77455 and service number 98472970 do not relate to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203, then the city must withhold that information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You assert the dates of birth you have marked are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.⁴ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the city must withhold all public citizens' dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, if the city determines the requestor is with a domestic relations office created under chapter 203 of the Family Code, and report number 06-77455 and service number 98472970 relate to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203, then the city must release CHRI pertaining to the named individual from that information, and must withhold the remainder of that information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the city determines the requestor is not with a domestic relations office created under chapter 203 of the Family Code, or report number 06-77455 and service number 98472970 do not relate to a person who is a party to a proceeding in which the office is providing services permitted under chapter 203 of the Family Code, then the city must withhold that information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

⁴Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

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 "Claire Morris Sloan".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 580530

Enc. Submitted documents

c: Requestor
(w/o enclosures)