



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 29, 2015

Mr. Stephen D. Gates  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2015-20412

Dear Mr. Gates:

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# 584429 (Midland ID# 17401).

The Midland Police Department (the "department") received a request for information pertaining to a named individual. You state the department has released some responsive information. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in

courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks all reports pertaining to a named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Western District of Texas (the "probation office") and may have a right of access to some of the requested information. Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007(c) of the Family Code, pursuant to which, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. Section 58.007 states, in relevant 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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by

Section 411.082, Government Code, the child, and the child's parent or guardian.

Fam. Code § 58.007(c), (e). 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). Upon review, we find report numbers 2009-01160004 and 9905280041 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). Therefore, report numbers 2009-01160004 and 9905280041 are generally confidential pursuant to section 58.007 of the Family Code.

Section 58.007(e) of the Family Code gives a "criminal justice agency as . . . defined by Section 411.082, Government Code" a right of access to juvenile law enforcement records. *Id.* § 58.007(e). Section 411.082 of the Government Code 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). We understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* Therefore, the requestor generally has a right of access to report numbers 2009-01160004 and 9905280041 under section 58.007(e) of the Family Code, and the department may not withhold these reports from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note although these reports are also generally confidential under common-law privacy, a statutory right of access prevails over the common-law. *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).

We note, however, report numbers 2009-01160004 and 9905280041 contain motor vehicle record information that is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Accordingly, the motor vehicle record information at issue, which we have

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

marked, is generally excepted from disclosure under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right to inspect the information at issue pursuant to section 58.007(e) of the Family Code. Therefore, we must address the conflict between the access provided under section 58.007(e) of the Family Code and the confidentiality provided under section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *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, section 58.007(e) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. Although a specific statutory right of access prevails over general exceptions to disclosure under the Act, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 58.007(e). Accordingly, in releasing the information at issue to the requestor, the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code.

As noted above, the requestor is a representative of the probation office. Section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain from the Texas Department of Public Safety (“DPS”) any criminal history record information (“CHRI”) maintained by the DPS about a person. *See* Gov’t Code § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter 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)). 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.” Gov’t

Code § 411.082(2). Thus, the remaining requested information, to the extent it exists, may contain CHRI. The requestor represents a criminal justice agency. *See id.* § 411.082(3)(A) (defining “criminal justice agency” as “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”). Further, you state the probation office will use any such information for a criminal justice purpose. *See id.* §§ 411.083(c); 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(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, the requestor is authorized to obtain CHRI from the department pursuant to section 411.087(a)(2) of the Government Code. *See* Gov’t Code §§ 411.083(c); Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 4337-4338 (Vernon). Consequently, to the extent the department maintains any additional information listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI from such documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See Collins*, 297 S.W.3d at 415; *CenterPoint Energy*, 436 F.3d 544. The department must withhold any remaining information, to the extent it exists, under section 552.101 in conjunction with common-law privacy.<sup>2</sup>

In summary, the department must release report numbers 2009-01160004 and 9905280041 to this requestor pursuant to section 58.007(e) of the Family Code; however, in releasing report numbers 2009-01160004 and 9905280041, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. To the extent the department maintains any additional information listing the named individual as a suspect, arrested person, or criminal defendant, the department must make available to the requestor the CHRI from such documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. The department must withhold any remaining information, to the extent it exists, under section 552.101 in conjunction with common-law privacy.<sup>3</sup>

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.

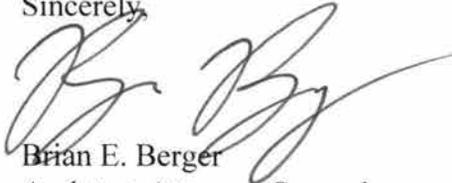
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<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

<sup>3</sup>We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "B. Berger", written over a white background.

Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 584429

Enc. Submitted documents

c: Requestor  
(w/o enclosures)