



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2015

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

OR2015-21062

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# 582259 (Ref No. 17204).

The City of Midland (the "city") received a request for information pertaining to a named individual. The city states it has released some of the requested information. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims 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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] 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). The city asserts report numbers 05-07270048, 140607033, and 140607039 are confidential under section 261.201 of the Family Code. Upon review, we find the city has failed to demonstrate how report numbers 140607033 and 140607039 involve reports of alleged or suspected abuse or neglect of a child made under chapter 261 or were used or developed in an investigation of alleged or suspected abuse or neglect under chapter 261. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 4, 2015 Tex. Sess. Law Serv. 4310, 4312 (to be codified as an amendment to Fam. Code § 261.001(1)), Act of May 21, 2015, 84th Leg., R.S., ch. 432, § 1, 2015 Tex. Sess. Law Serv. 1686, 1686-87 (to be codified as an amendment to Fam. Code § 261.001(4)) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Accordingly, we conclude the city may not withhold report numbers 140607033 and 140607039 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we agree report number 05-07270048 was used or developed in an investigation of alleged or suspected child abuse or neglect. Additionally, we further find report number 09-04090038 was used or developed in an investigation of alleged or suspected child abuse or neglect. Therefore, we determine report numbers 05-07270048 and 09-04090038 are generally confidential pursuant to section 261.201 of the Family Code. However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). Report numbers 05-07270048 and 09-04090038 are also subject to section 58.007 of the Family Code, which constitutes applicable state law for purposes of section 261.201(a). Accordingly, we will address the applicability of section 58.007 to report numbers 05-07270048 and 09-04090038.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. The relevant language of section 58.007 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.

...

(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.

Id. § 58.007(c), (e). Section 58.007(c) is applicable to records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 935, § 18, 2015 Tex. Sess. Law Serv. 3224, 3233-34 (to be codified as amendments to Fam. Code § 51.03); Act of May 31, 2015, 84th Leg., R.S., ch. 944, § 4, 2015 Tex. Sess. Law Serv. 3268, 3269-70 (to be codified as an amendment to Fam. Code § 51.03(b)); Act of June 1, 2015, 84th Leg., R.S., ch. 1273, § 3, 2015 Tex. Sess. Law. Serv. 4310, 4311 (to be codified as an amendment to Fam. Code § 51.03(b)) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). 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 08-01250044 and 100929002 involve child suspects other than the individual named in the request. It does not appear that any of the exceptions to confidentiality under section 58.007 of the Family Code apply to this information.¹ Therefore, the city must generally withhold report numbers 08-01250044 and 100929002 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note, however, the requestor is a representative of the Probation Office of the United States District Court for the Western District of Texas (the “probation office”). Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled

¹We note the requestor is seeking information about an individual who is listed as an involved person in report number 08-01250044 and as an adult suspect in report number 100929002. The requestor is not seeking information about the individuals named as juvenile suspects or offenders in these 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[.]”).

to obtain from the [Department of Public Safety (“DPS”)] any criminal history record information [“CHRI”] maintained by [DPS] about a person.” *Id.* § 411.089(a). In addition, section 411.087(a) of the Government Code provides:

(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)). 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.” *Id.* § 411.082(2). Report number 100929002 contains CHRI about the individual named in the request. 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), 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).

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). “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, detention, 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” engaged in the administration of criminal justice for purposes of chapter 411, and the requestor is requesting the information for a criminal justice purpose. Accordingly, under section 411.087(a)(2), the requestor has a right of access to information concerning the named individual in report number 100929002 that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions.

Thus, there is a conflict between the confidentiality provided to report number 100929002 by section 58.007(c) of the Family Code and the right of access to CHRI provided to this requestor 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). Although section 58.007(c) 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 to CHRI granted to this requestor by section 411.087(a)(2) of the Government Code prevails over the more general confidentiality provision of section 58.007(c) of the Family Code. Accordingly, the city must release to this requestor information in report number 100929002 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 withhold the remaining information in this report, as well as the entirety of report 08-01250044, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.²

Next, we find report numbers 05-07270048, 07-09290007, 08-07260029, 08-08020015, 08-09090036, 09-01090018, 09-04090003, and 09-04090038 involve the individual named in the request as a child suspect. Accordingly, these reports are also generally confidential under section 58.007(c) of the Family Code. However, as previously noted, the requestor is a representative of the probation office. Section 58.007(e) gives a "criminal justice agency as . . . defined by Section 411.082, Government Code" a right of access to juvenile law enforcement records. Fam. Code § 58.007(e). We understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov't Code § 411.082(3)(A). Therefore, the requestor generally has a right of access to the information at issue under section 58.007(e) of the Family Code. However, as previously noted, report numbers 05-07270048 and 09-04090038 are also subject to section 261.201(a) of the Family Code. Records subject to section 261.201 may be disclosed under applicable state law and for purposes consistent with the Family Code. *See* Fam. Code § 261.201(a). Section 58.007(e) is applicable state law allowing disclosure to the probation office. However, the city must determine whether releasing the information at issue to the probation office is consistent with the Family Code. If the city determines the probation office does not intend to use report numbers 05-07270048 and 09-04090038 for purposes consistent with the Family Code, then the city must withhold this information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the

²We note report 08-01250044 does not contain any CHRI pertaining to the individual named in the request.

Family Code. *See id.* § 261.201(b)-(g), (l), Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 82, 2015 Tex. Sess. Law Serv. 2218, 2244 (Vernon) (to be codified at section 261.201(k)) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655, 440 at 2 (1986) (construing predecessor statute). However, if the city determines the probation office intends to use report numbers 05-07270048 and 09-04090038 for purposes consistent with the Family Code, then the requestor has a right of access to this information pursuant to section 58.007(e) of the Family Code. In any event, the requestor generally has a right of access to the remaining reports at issue under section 58.007(e), and the city may not withhold this information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note, however, some portions of report numbers 05-07270048, 07-09290007, 08-07260029, 08-08020015, 08-09090036, 09-01090018, 09-04090003, and 09-04090038 consist of motor vehicle record information that is subject to section 552.130 of the Government Code.³ 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 marked, is generally excepted from disclosure under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right of access to report numbers 07-09290007, 08-07260029, 08-08020015, 08-09090036, 09-01090018, and 09-04090003 pursuant to section 58.007(e) and may have a statutory right of access to report numbers 05-07270048 and 09-04090038 pursuant to section 58.007(e). 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. As previously noted, where information falls within both a general and a specific provision of law, the specific provision prevails over the general. 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 report numbers 05-07270048, 07-09290007, 08-07260029, 08-08020015, 08-09090036, 09-01090018, 09-04090003, and 09-04090038 to the requestor, the city must withhold the motor vehicle record information we have marked in these reports under section 552.130 of the Government Code.

³The 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).

Next, the city raises section 411.083 of the Government Code for the submitted information in Exhibit D. Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to CHRI. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. As previously noted, CHRI means “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). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI DPS maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Act of May 27, 2015, 84th Leg., R.S., ch 1279 § 21, 2015 Tex. Sess. Law Serv. 4337 (Vernon) (to be codified as an amendment to Gov’t Code § 411.083(a)). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note, however, active warrant information or other information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See id.* § 411.081(b). We further note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the information we have marked in Exhibit D is generally confidential under section 552.101 in conjunction with chapter 411 of the Government Code. As previously noted, however, the requestor is a representative of a criminal justice agency who intends to use the CHRI for a criminal justice purpose. Therefore, we find the requestor has a right of access to the CHRI we have marked in Exhibit D, and the city may not withhold this information from the requestor under section 552.101 of the Government Code in conjunction with section 411.083. Further, we find the city has not demonstrated any of the remaining information in Exhibit D constitutes confidential CHRI for the purposes of chapter 411. As such, the city may not withhold any portion of Exhibit D under section 552.101 on this basis.

We note some of the non-CHRI information in Exhibit D and report number 14067039 contain information subject to common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of 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. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, 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. *Indus. Found.*, 540 S.W.2d 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. Upon review, we find portions of the non-CHRI information in Exhibit D and report number 14067039 satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold all public citizens dates of birth in this information, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, we note portions of the non-CHRI information in Exhibit D and report numbers 140607033 and 140607039 also contain motor vehicle record information subject to section 552.130 of the Government Code. As previously noted, 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, city must withhold the motor vehicle record information we have marked in the non-CHRI information in Exhibit D and report numbers 140607033 and 140607039.

In summary, the city must withhold report number 08-01250044 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the city determines the probation office does not intend to use report numbers 05-07270048 and 09-04090038 for purposes consistent with the Family Code, then the city must withhold this information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city must withhold all public citizens dates of birth, as well as the information we have marked, in the non-CHRI information in Exhibit D and report number 14067039 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the

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).

motor vehicle record information we have marked under section 552.130 of the Government Code. The city must release the remaining information.⁵

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 582259

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵The remaining information contains social security numbers. Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without requesting a decision from this office. *See* Gov't Code § 552.147(b). Furthermore, we note the requestor has a right of access to some of the information being released in this instance. *See* Fam. Code § 58.007(e). Thus, if the city receives another request for this information from a different requestor, the city must seek another ruling from this office.