



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2015

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

OR2015-21306

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# 582719 (City ID# 17276).

The Midland Police Department (the "department") received a request for information related to a named individual. You state you have released some information to the requestor. 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. You claim the submitted information is confidential pursuant to section 58.007(c) of the Family Code, which applies to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. However, we note section 58.007 is inapplicable in this instance because the conduct at issue occurred prior to September 1, 1997. However, we note the conduct at issue is subject to former section 51.14 of the Family Code. Accordingly, we will address the applicability of this section. 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), 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 submitted information pertains to juvenile conduct that occurred prior to January 1, 1996, and pertains to an individual 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 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 submitted 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 submitted information under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.¹

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”) 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

¹As our ruling is dispositive, we need not address your argument against disclosure of the submitted information.

[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:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information 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)). 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). Thus, the submitted information 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); Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4327, 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 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, 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].” 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 information 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) of the Government Code, the requestor has a general right of access to information in the otherwise confidential report 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.

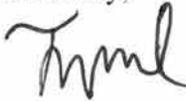
Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless 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 the submitted information. The department must withhold the remaining submitted information 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 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. However, if the department determines the requestor does not intend to use the CHRI for a criminal justice purpose, the department must withhold this information under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. In either case, the department must withhold the remaining submitted information 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# 582719

Enc. Submitted documents

c: Requestor
(w/o enclosures)