



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 19, 2015

Mr. Richard A. McCracken  
Assistant City Attorney  
Office of the City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2015-24331

Dear Mr. McCracken:

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# 587732 (Fort Worth PIR# W045370).

The Fort Worth Police Department (the "department") received a request for offense reports pertaining to a named individual, including reports pertaining to three specified arrests. You state the department has released some of the requested 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which provides:

(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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c). *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and younger than seventeen at the time of the conduct. *See id.* § 51.02(2). The submitted report involves a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, the information at issue is subject to section 58.007 of the Family Code. We note the submitted report lists the named individual as a suspect who was older than seventeen at the time of the conduct. Although the requestor is a representative of the Probation and Pretrial Services Office of the United States District Court for the Western District of Texas (the “probation office”), she is seeking information about the adult suspect and not the child suspect identified in this report. Thus, we conclude the requestor does not have a right of access to this report under section 58.007 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[.]”). Therefore, as the department states none of the exceptions to section 58.007 apply in this instance, the information at issue is generally confidential under section 58.007 of the Family Code. However, the requestor may have a right of access to some of the information under section 411.087(a)(2) of the Government Code. *See* Gov’t Code § 411.087(a)(2).

Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Department of Public Safety] any criminal history record information [“CHRI”] maintained by the [Department of Public Safety] 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 the

[Department of Public Safety] [CHRI] maintained by the [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). 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). The submitted report 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), .087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, if the requestor represents a “criminal justice agency,” she is authorized to obtain CHRI in the submitted report concerning the named individual from the department pursuant to section 411.087(a)(2) of the Government Code, but only for a criminal justice purpose. *See Gov’t Code* §§ 411.083(c), .087(b).

A “criminal justice agency” is defined in part 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[.]” *Id.* § 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 criminal history record information.” *Crim. Proc. Code art. 60.01(1)*.

We conclude the probation office is engaged in the administration of criminal justice for purposes of chapter 411. However, 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, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 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), the department must generally make available to the requestor information 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 must withhold the remainder of the information under section 552.101 of the

Government Code in conjunction with section 58.007 of the Family Code. In that instance, there is a conflict between the confidentiality provided by section 58.007(c) 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). 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.

Therefore, notwithstanding section 58.007(c), if the department determines the requestor intends to use the CHRI for a criminal justice purpose, then 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 pursuant to section 411.087(a)(2) of the Government Code. In that instance, the department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In summary, if the department determines the requestor intends to use the CHRI from the submitted information for a criminal justice purpose, then the department must make the CHRI of the named individual available to this requestor from the submitted information pursuant to section 411.087(a)(2) of the Government Code and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 58.007(c) 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 section 58.007(c) 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,

A handwritten signature in black ink, appearing to read "Lee Seidlits", with a stylized flourish at the end.

Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 587732

Enc. Submitted documents

c: Requestor  
(w/o enclosures)