



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 23, 2015

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2015-24638

Dear Ms. Mebane:

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# 587405 (Fort Worth PIR No. W045300).

The City of Fort Worth (the "city") received a request for incident reports related to specified incidents and all police reports involving a named individual as a victim. You state the city has released some of the requested 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 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, such as section 261.201 of the Family Code,¹ which provides, in relevant part, the following:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent

¹Although you raise former section 34.08 of the Family Code, which is the predecessor to section 261.201 of the Family Code, we note former section 34.08 has been repealed and is no longer in effect. See Act of April 20, 1995, 74th Leg., R.S., ch. 20, § 2, 1995 Tex. Gen. Laws 113, 282.

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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). The submitted information pertains to two investigations by the city's police department of alleged or suspected child abuse and falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). In this instance, however, the requestor is the legal representative of the child victim listed

in the submitted reports. *See id.* § 261.201(k). Thus, the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *Id.* Section 261.201(1)(3), however, states the identity of the reporting party must be withheld. *Id.* § 261.201(1)(3). Accordingly, the city must withhold the reporting party's identity we have marked in service number 95490361 under section 552.101 in conjunction with section 261.201(1)(3). *Id.* In addition, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(1)(2). Thus, we will address your remaining argument for the information at issue.

Section 552.101 of the Government Code also encompasses former section 51.14(d) of the Family Code. Prior to its repeal by the Seventy-Fourth Legislature, former section 51.14(d) provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. *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). Section 51.14(d) 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). However, we find service number 95490361 does not identify a juvenile suspect or offender for the purposes of former section 51.14. Accordingly, the city may not withhold service number 95490361 under section 552.101 on this basis. As no further exceptions to disclosure have been raised, the city must release the remaining information in service number 95490361.

Upon review, we find service number 95573818 pertains to juvenile conduct that occurred prior to January 1, 1996, and involves suspects who were 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)). Therefore, we find former section 51.14(d) is applicable to service number 95573818. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating a need for supervision engaged in by child). Accordingly, service number 95573818 is generally confidential under former section 51.14 (d).

However, we note the requestor is an investigator for the Federal Public Defender's Office (the "public defender's office"). Section 411.1272 of the Government Code provides:

The office of capital writs and a public defender's office are entitled to obtain from the [Department of Public Safety ("DPS")] criminal history record information maintained by [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender's office has been appointed.

Gov't Code § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from [DPS] criminal history record information maintained by [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.

Id. § 411.087(a)(2). "Criminal history record information" ("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 id.* § 411.082(2). Thus, the requestor is authorized to obtain the CHRI in service number 95573818 from the city pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender's office is appointed. *See id.* §§ 411.087(a)(2), .1272.

Therefore, if the city determines the CHRI in service number 95573818 does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city must withhold service number 95573818 in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

See Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986). If, however, the city determines the CHRI in service number 95573818 relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code, the city must generally make available to the requestor information from service number 95573818 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 city must withhold the remaining information under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. 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 sections 411.087(a)(2) and 411.1272 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, sections 411.087 and 411.1272 of the Government Code give a specific type of requestor, a public defender's office, access to particular information, CHRI. Thus, the statutory right of access granted to the requestor by sections 411.087 and 411.1272 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 city determines the CHRI in service number 95573818 relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city 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 pursuant to sections 411.087 and 411.1272 of the Government Code. The city must withhold the remaining information in service number 95573818 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

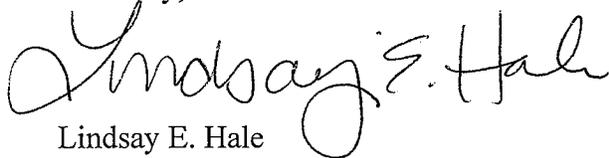
In summary, the city must withhold the reporting party's identity we have marked in service number 95490361 under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. If the city determines the CHRI in service number 95573818 does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city must withhold service number 95573818 in its entirety under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. If the city determines the CHRI in service

number 95573818 relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the city 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 pursuant to sections 411.087 and 411.1272 of the Government Code. In that instance, the city must withhold the remaining information in service number 95573818 under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. The city must release the remaining information in service number 95490361.²

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/eb

Ref: ID# 587405

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information that is being released from service number 95490361. See Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.