



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 24, 2015

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

OR2015-24742

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# 588321 (PIR No. W045507).

The City of Fort Worth (the "city") received a request for all information related to a named individual, including several specified incident reports. 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.

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. 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.

Fam. Code § 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 id.* § 51.03(a), (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 each of the submitted reports involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Therefore, this information is generally confidential pursuant to section 58.007(c) of the Family Code.

However, section 58.007(e) of the Family Code provides, "[l]aw 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 [of the Family Code] [or] a criminal justice agency as that term is defined by Section 411.082, Government Code[.]" *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).

In this instance, the requestor is a representative of the Probation and Pretrial Services Office of the United States District Court for the Northern District of Texas (the "probation office"). We understand the probation office is a criminal justice agency for purposes of section 58.007(e). Accordingly, the requestor has a right to inspect the information in offense report numbers 06-5910, 06-1154437, 06-111537, 06-118438, 07-1117, 07-14734, 07-37579, and 07-38469 under section 58.007(e) of the Family Code, and these reports may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, and the city must generally release them.

We also note 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.” *See* Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides in pertinent part the following:

(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). Thus, offense report number 06-54157 contains CHRI related to the named individual. 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, because the requestor represents a “criminal justice agency,” she is authorized to obtain CHRI related to 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).

In this instance, we cannot determine whether the requestor intends to use the CHRI for a criminal justice purpose. Consequently, if the city determines the requestor does not intend to use the CHRI for a criminal justice purpose, then the requestor does not have a right of access to the CHRI under chapter 411 and the city must withhold offense report number 06-54157 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the city determines the requestor intends to use the CHRI for a criminal justice purpose, then, pursuant to section 411.087(a)(2), the requestor generally has a right of access to CHRI within report number 06-54157. 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 to the CHRI 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 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 granted to a criminal justice agency 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 city determines the requestor intends to use the CHRI for a criminal justice purpose, 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 section 411.087(a)(2) of the Government Code. In that instance, the city must withhold the remainder of report number 06-54157 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We also note portions of offense report numbers 06-5910, 06-1154437, 06-111537, 06-118438, 07-1117, 07-14734, 07-37579 are subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Accordingly, the city must generally withhold the motor vehicle record information we have marked in the information at issue under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right to inspect the information in offense report numbers 06-5910, 06-1154437, 06-111537, 06-118438, 07-1117, 07-14734, 07-37579 pursuant to section 58.007(e) of the Family Code. 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. 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. 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 city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the city determines the requestor does not intend to use the CHRI from offense report number 06-54157 for a criminal justice purpose, the city must withhold offense report number 06-54157 in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the city determines the requestor intends to use the CHRI from offense report number 06-54157 for a criminal justice purpose, 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 section 411.087(a)(2) of the Government Code, and must withhold the remainder of offense report number 06-54157 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must release offense report numbers 06-5910, 06-1154437, 06-111537, 06-118438, 07-1117, 07-14734, 07-37579 pursuant to section 58.007(e) of the Family Code; however, in releasing this information, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 588321

Enc. Submitted documents

c: Requestor
(w/o enclosures)