



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 17, 2015

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

OR2015-26592

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# 591405 (City ID No. 17833).

The Midland Police Department (the "department") received a request for information pertaining to a named individual. You state the department has 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses 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. This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public

records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request seeks information pertaining to a named individual. This request requires the department to compile the named individual's criminal history and implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records listing the named individual as a suspect, arrestee, or criminal defendant, the department must generally withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, the requestor is a representative of the Probation and Pretrial Service 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 requested information. We note Exhibit B consists of records subject to section 58.007 of the Family Code, which provides, in relevant part:

(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). Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are subject to 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 the information in Exhibit B involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *Id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Family Code § 58.007). Therefore, Exhibit B is generally confidential pursuant to section 58.007(c) of the Family Code.

However, we note section 58.007(e) of the Family Code gives a “criminal justice agency as . . . defined by Section 411.082, Government Code” a right of access to juvenile law enforcement records. *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). You inform us the probation office is a criminal justice agency as defined by section 411.082. *See id.* Therefore, the requestor has a right of access to Exhibit B under section 58.007(e) of the Family Code, and the department may not withhold the information from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We note although these records are also confidential under common-law privacy, a statutory right of access prevails over the common-law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, the department must generally release Exhibit B to this requestor pursuant to section 58.007(e) of the Family Code.

We note, however, Exhibit B contains motor vehicle record information subject to section 552.130 of the Government Code.¹ Section 552.130 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 motor vehicle record information we have marked within Exhibit B is generally excepted from disclosure under section 552.130 of the Government Code.

However, as previously noted, the requestor has a statutory right to inspect Exhibit B 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).*

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 Exhibit B to the requestor, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Next, we will address the requestor’s possible right of access to any remaining requested information. Section 411.089(a) of the Government Code provides a criminal justice agency is entitled to obtain from the Texas Department of Public Safety (“DPS”) any criminal history record information (“CHRI”) maintained by the DPS about a person. *See Gov’t Code* § 411.089(a); *see also id.* § 411.083(b)(1) (DPS shall grant criminal justice agencies access to CHRI). In addition, section 411.087(a) of the Government Code provides in part:

(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.

Id. § 411.087(a)(2). 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 id.* § 411.082(2). Any remaining requested information may contain CHRI. As previously noted, you inform us the requestor represents a criminal justice agency. *See id.* § 411.082(3)(A). 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); 411.087(b); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of criminal history record information). Thus, the requestor is authorized to obtain CHRI 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(a)(2).

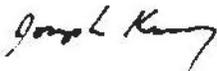
Although it appears that the requestor is engaged in the administration of criminal justice under chapter 411, to the extent the information at issue exists, we are unable to determine whether the requestor intends to use any CHRI at issue for a criminal justice purpose. Consequently, to the extent the department maintains law enforcement records, other than Exhibit B, depicting the named individual as a suspect, arrestee, or criminal defendant, and the department determines the requestor intends to use the CHRI for a criminal justice purpose, we conclude the department must make available to the requestor the CHRI that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that event, to the extent it exists, the department must withhold any remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the department 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 any CHRI under section 411.089. In that event, to the extent the department maintains law enforcement records, other than Exhibit B, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must release Exhibit B to this requestor pursuant to section 58.007(e) of the Family Code; however, in releasing this information, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the department maintains law enforcement records, other than Exhibit B, listing the named individual as a suspect, arrested person, or criminal defendant, and the department determines the requestor intends to use the CHRI in those records for a criminal justice purpose, the department must make available to the requestor the CHRI from those records that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, but must withhold under section 552.101 of the Government Code in conjunction with common-law privacy any remaining information listing the named individual as a suspect, arrested person, or criminal defendant. However, if the department 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 any CHRI under section 411.089 and, to the extent the department maintains law enforcement records, other than Exhibit B, depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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 Keeney
Assistant Attorney General
Open Records Division

JDK/bhf

Ref: ID# 591405

Enc. Submitted documents

c: Requestor
(w/o enclosures)