



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2016

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2016-00479

Dear Ms. Honey:

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# 593356 (ORR# W046535).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual, including specified incident reports. The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions 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. Section 552.101 encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007(c) provides the following:

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.

Id. Upon review, we find police report number 08-136998 and service numbers 01151515 and 02059416 involve alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (for purposes of section 58.007(c), “child” means person who is ten years of age or older and under seventeen years of age when conduct occurred), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Therefore, this information is generally confidential under section 58.007(c) of the Family Code.

However, the requestor is a representative of the Probation and Pretrial Service Office of the United States District Court for the Northern District of Texas (the “probation office”). Section 58.007(e), in part, gives a criminal justice agency as defined by section 411.082 of the 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). “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, 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 understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov’t Code § 411.082(3)(A).

As noted above, the requestor is seeking information about a named individual. In police report number 08-136998 and service number 02059416, the named individual is an adult suspect. *See* Fam. Code § 51.02(2). The requestor is not seeking information about the individual named as a juvenile suspect or offender in this information, so as to implicate the access provided in section 58.007(e) of the Family Code. *See id.* § 58.007(e) (“Law 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, the requestor does not have a right of access to this information under section 58.007(e). However, the named individual is a juvenile suspect in service

number 01151515. Therefore, the requestor has a right of access to this information under section 58.007(e) of the Family Code. Because the requestor has a right of access to this information under section 58.007(e), the department may not withhold it under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. We also note a statutory right of access prevails over the common-law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no conflicting or controlling statutory law). Nevertheless, service number 01151515 contains motor vehicle record information subject to section 552.130 of the Government Code, which excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(2). Thus, this motor vehicle record information, which you have marked, is generally confidential under section 552.130 of the Government Code. Accordingly, 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 for this information.

Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *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). Section 58.007(e) generally applies to all juvenile law enforcement records, while section 552.130 specifically protects motor vehicle record information. In addition, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. *See* ORDs 613 at 4, 451 at 4. Therefore, 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, the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code. The department must release the remaining information in service number 01151515 pursuant to section 58.007(e) of the Family Code.

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 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(d) provides as follows:

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). Upon review, we find service number 96665144 pertains to juvenile conduct that occurred prior to January 1, 1996, and 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)-(3)). Therefore, we find service number 96665144 is generally confidential under former section 51.14(d). Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating a need for supervision engaged in by child).

However, the requestor may have a right of access to some of the information in police report number 08-136998 and service numbers 02059416 and 96665144 under section 411.087(a) of the Government Code. Section 411.089(a) of the Government Code provides “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information maintained by the [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 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 [Texas Department of Public Safety] criminal history record information maintained by the [Texas Department of Public Safety] 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). We note “criminal history record information” 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

information at issue contains criminal history record information. Nevertheless, a criminal justice agency that receives criminal history record information 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)

As discussed above, we understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov't Code § 411.082(3). Further, the requestor states the named individual is a defendant under investigation by the probation office. Thus, we find the requestor is seeking the information for a criminal justice purpose. Accordingly, the requestor has a right of access to the criminal history record information in police report number 08-136998 and service numbers 02059416 and 96665144 pursuant to section 411.087(a)(2). In addition, as mentioned above, a statutory right of access prevails over the common-law. *See CenterPoint Energy Houston Elec. LLC*, 436 F.3d at 544. Nonetheless, we must address the conflict between the access provided under section 411.087(a)(2) of the Government Code and the confidentiality provided under section 58.007(c) and former section 51.14(d) of the Family Code.

Although section 58.007(c) and former section 51.14(d) of the Family Code generally make 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, criminal history record information, for a criminal justice purpose. Thus, the statutory right of access under section 411.087(a)(2) of the Government Code prevails over the more general confidentiality provision of section 58.007 and former section 51.14(d) of the Family Code. *See generally* Gov't Code § 311.026. Therefore, the department must release the 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, but must withhold the remaining information in police report number 08-136998 and service number 02059416 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Government Code and in service number 96665144 under section 552.101 in conjunction with former section 51.14(d) of the Family Code.

To conclude, with the exception of the information you have marked under section 552.130 of the Government Code, which the department must withhold, the department must release service number 01151515 pursuant to section 58.007(e) of the Family Code.¹ The department must release the 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, but must withhold the remaining information in police report number 08-136998 and service

¹Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

number 02059416 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Government Code and in service number 96665144 under section 552.101 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 593356

Enc. Submitted documents

c: Requestor
(w/o enclosures)