



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2016

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2016-06317

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# 602098 (Midland Reference No. 18464).

The Midland Police Department (the "department") received a request for information pertaining to a specified incident involving a named individual. 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 58.007 of the Family Code, which provides in pertinent 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.

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. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007 of the Family Code). 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 conduct at issue. *See id.* § 51.02(2). Upon review, we find the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). The exceptions in section 58.007 do not apply in this instance.¹ *See id.* § 58.007(e)-(i). Accordingly, the department must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

In this instance, the requestor is an investigator with the Enforcement Division of the Texas Lottery Commission (the “commission”). Section 411.108 of the Government Code provides that the commission is entitled to obtain criminal history record information (“CHRI”) maintained by the Texas Department of Public Safety (“DPS”) that relates to a person who falls under either subsection (a) or subsection (a-1) of that section. *See Gov’t Code* § 411.108(a), (a-1). Under section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087(a)(2). Further, section 466.201 of the Government Code states the commission is entitled to obtain CHRI maintained by another law enforcement agency to assist in the investigation of any of the categories of persons enumerated in subsections 466.201(a) and 466.201(b). *Id.* § 466.201(a)-(b).

¹We note the requestor is seeking information about an individual who is listed as an adult suspect in the report at issue. The requestor is not seeking information about the individual named as a juvenile suspect or offender in the report, so as to implicate the access provided in section 58.007(e) 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[.]”).

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, when read together, sections 411.108, 411.087, and 466.201 of the Government Code may grant the commission a right of access to a portion of the submitted information.

Upon review, we are unable to determine whether the commission is investigating an individual within one of the categories enumerated in section 411.108 or section 466.201 of the Government Code. Accordingly, if the named individual falls within one of the categories enumerated in either section 411.108 or section 466.201, then the department must generally make available to the commission the CHRI pertaining to this individual contained in the submitted information. Thus, 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 sections 411.108, 411.087(a)(2), and 466.201 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 id.* § 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(c) of the Family Code generally makes juvenile law enforcement records confidential. However, sections 411.108, 411.087(a)(2), and 466.201 of the Government Code give a specific requestor, the commission, access to particular information, CHRI, pertaining to enumerated categories of individuals. Thus, the statutory rights of access granted to the requestor by sections 411.108, 411.087(a)(2), and 466.201 of the Government Code prevail over the more general confidentiality provision of section 58.007(c) of the Family Code. Therefore, notwithstanding section 58.007(c), if the named individual falls within one of the categories enumerated in either section 411.108 or section 466.201 of the Government Code, 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. 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. However, if the named individual does not fall within one of the categories enumerated in section 411.108 or section 466.201, then, the commission does not have a right of access to the CHRI in the submitted information and it must be withheld 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, 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 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 602098

Enc. Submitted documents

c: Requestor
(w/o enclosures)

REF ID # 602098

~~MICHAEL JONES
INVESTIGATOR
TEXAS LOTTERY COMMISSION
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