



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 5, 2016

Mr. Guillermo Trevino  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2016-07656

Dear Mr. Trevino:

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# 604336 (PIR# W048556).

The Fort Worth Police Department (the "department") received a request for information pertaining to a named individual, including seven specified offense reports. You state the department has released some 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 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 Exhibit C-2 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).

We note part of Exhibit C-2, which we have marked C-2-1, lists the named individual as an arrestee who was older than seventeen at the time of the conduct. Although the requestor is a representative of the Probation Office of the United States District Court for the Northern District of Texas (the “probation office”), she is seeking information about the adult suspect and not the child suspect identified in Exhibit C-2-1. Thus, we conclude the requestor does not have a right of access to Exhibit C-2-1 under section 58.007(e) of the Family Code. *See id.* § 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[.]”). Therefore, as the department states none of the exceptions to section 58.007 apply in this instance, Exhibit C-2-1 is generally confidential under section 58.007 of the Family Code. However, the requestor may have a right of access to some of the information at issue under section 411.087(a)(2) of the Government Code. *See Gov’t Code* § 411.087(a)(2).

Section 411.089(a) of the Government Code provides that “[a] criminal justice agency is entitled to obtain from the [Texas Department of Public Safety] any criminal history record information [(“CHRI”)] maintained by the [Texas Department of Public Safety] about a person.” *See id.* § 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] [CHRI] 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 [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). Thus, Exhibit C-2-1 contains CHRI of the individual named in the request. 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 CHRI).

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, detention, 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 [CHRI].” Crim. Proc. Code art. 60.01(1). You acknowledge, and we agree, the probation office is a criminal justice agency as defined by section 411.082. *See id.* You also inform us the requestor intends to use the CHRI for a criminal justice purpose. Consequently, pursuant to section 411.087(a)(2), the department must generally make available to the requestor information pertaining to the named individual that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions, and must withhold the remainder of Exhibit C-2-1 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. 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 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) of the Family Code 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 the requestor 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. Although you additionally raise section 552.101 of the Government Code in conjunction with common-law privacy for Exhibit C-2, we note 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, notwithstanding section 58.007(c), the department must make available to this requestor information pertaining to the named individual 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 information in Exhibit C-2-1 pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information in Exhibit C-2-1 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note the remaining information in part of Exhibit C-2, which we have marked C-2-2, lists the named individual as a juvenile offender. 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). As noted above, the requestor is a representative of the probation office which is a criminal justice agency for purposes of section 58.007(e). Accordingly, the requestor has a right to inspect Exhibit C-2-2 under section 58.007(e) of the Family Code, and this information 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.

However, we note Exhibit C-2-2 is subject to section 261.201(a) of the Family Code. Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent 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 this chapter 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 this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find Exhibit C-2-2 was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1), (4) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). Therefore, we find Exhibit C-2-2 is within the scope of section 261.201 of the Family Code. You do not indicate the department has adopted a rule governing the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find Exhibit C-2-2 is confidential pursuant to section 261.201 of the Family Code. However, section 261.201(a) provides information encompassed by that section may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

As noted above, Exhibit C-2-2 is subject to section 58.007(e). Section 58.007(e) is applicable state law allowing disclosure to the probation office. However, the department must determine whether releasing the information at issue to the probation office is consistent with the Family Code. If the department determines the probation office intends to use Exhibit C-2-2 for purposes consistent with the Family Code, then the requestor has a right of access to Exhibit C-2-2 pursuant to section 58.007(e) of the Family Code. However, if the department determines the probation office does not intend to use the information at issue for purposes consistent with the Family Code, then the department must withhold Exhibit C-2-2 its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(b)-(g), (k), (1) (listing entities authorized to receive section 261.201 information); Open Records Decision Nos. 655 (1997), 440 at 2 (1986) (construing predecessor statute).

As noted above, section 552.101 of the Government Code also encompasses the doctrine of 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. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Moreover, we find a

compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request requires the department to compile unspecified law enforcement records concerning the individual named in the request, thus implicating the named individual's right to privacy. Again, the probation office is a criminal justice agency as defined by section 411.082. *See* Gov't Code § 411.082(3)(A). In addition, as previously noted, you inform us the requestor intends to use any CHRI for a criminal justice purpose. Therefore, to the extent the department maintains unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, 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. *See Collins*, 297 S.W.3d at 415; *CenterPoint Energy*, 436 F.3d at 544. Further, to the extent it exists, the department must withhold any remaining information listing the named individual as a suspect, arrested person, or criminal defendant, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must make available to this requestor information pertaining to the named individual 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 information in Exhibit C-2-1 pursuant to section 411.087(a)(2) of the Government Code. The department must withhold the remaining information in Exhibit C-2-1 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the department determines the probation office intends to use Exhibit C-2-2 for purposes consistent with the Family Code, then the requestor has a right of access to Exhibit C-2-2 pursuant to section 58.007(e) of the Family Code; otherwise, exhibit C-2-2 must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the department maintains further unspecified law enforcement records listing the named individual as a suspect, arrested person, or criminal defendant, 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 pursuant to section 411.087(a)(2) of the Government Code. The department must withhold any remaining information listing the named individual as a suspect, arrested person, or criminal defendant, under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup>

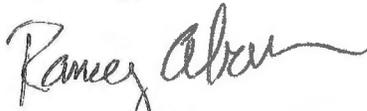
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>Because the requestor has a statutory right of access to certain information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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](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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/dls

Ref: ID# 604336

Enc. Submitted documents

c: Requestor  
(w/o enclosures)