



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2016

Mr. Christopher Garza
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2016-12693

Dear Mr. Garza:

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# 612652.

The Brazoria County Juvenile Probation Department (the "department") received a request for information pertaining to the requestor's client.¹ 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 information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

¹We note the department sought and received clarification of the information requested. See Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request).

(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 case number 1633 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Accordingly, we find case number 1633 is subject to section 261.201 of the Family Code. As you do not indicate the investigating agency has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude case number 1633 is confidential pursuant to section 261.201 of the Family Code. Accordingly, the department must generally withhold case number 1633 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find the department has not established any of the remaining information consists of a report of child abuse or neglect nor does the information reveal the identity of an individual who made a report of suspected child abuse or neglect for purposes of section 261.201(a)(1) of the Family Code. Furthermore, we find the department has failed to demonstrate any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2) of the Family Code. Therefore, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

We note, however, section 261.201(a) of the Family Code also provides information encompassed by this subsection may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law[.]” Fam. Code § 261.201(a). In this instance, section 58.007 of the Family Code, and its predecessor statute, section 51.14 of the Family Code, may constitute “applicable state law” for purposes of section 261.201(a).

The department raises section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The records of a juvenile probation department relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(b). *See id.* § 58.007(b). However, we note section 58.007 is inapplicable in this instance because the records at issue relate to conduct taking place prior to January 1, 1996. Accordingly, we address your argument under former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile

court, pertaining to juvenile conduct that occurred before January 1, 1996, were governed by former section 51.14(b), 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. Section 51.14 of the Family Code provided, in relevant part, as follows:

(b) All files and records of a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court are open to inspection only by:

(1) the professional staff or consultants of the agency or institution;

(2) the judge, probation officers, and professional staff or consultants of the juvenile court;

(3) an attorney for the child;

(4) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the work of the agency or institution; or

(5) the Texas Department of Corrections, the Department of Public Safety, and the Texas Juvenile Probation Commission, for the purpose of maintaining statistical records of recidivism, and for diagnosis and classification.

Fam. Code § 51.14(b) (repealed 1995). Section 51.14 applies only to records of a “child,” which is defined as a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). The records of a juvenile probation department are subject to section 51.14(b). *See* Attorney General Opinion MW-359 at 1-2 (1981). Case numbers 1401 and 1633 consist of juvenile probation records related to juvenile conduct that occurred before January 1, 1996. Therefore, the submitted information is generally confidential under section 51.14(b) of the Family Code. However, section 51.14(b)(3) provides a right of access to an attorney for the child who is the subject of the records. In this instance, the requestor is an attorney for the person whose juvenile probation records are at issue. Accordingly, the requestor has a right of access to the records concerning her client pursuant to former section 51.14(b) of the Family Code, which constitutes “applicable state law” for purposes of section 261.201(a).

We next note that in addition to a right of access under “applicable state law,” section 261.201(a) also requires that release be “for purposes consistent with the [Family Code].” Therefore, if the department determines the requestor intends to use case number 1633 for purposes consistent with the Family Code, as required by section 261.201(a), then the department must generally release this information to the requestor. However, if the department determines the requestor does not intend to use case

number 1633 for purposes consistent with the Family Code, then case number 1633 must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which pertains to mental health records. Section 611.002 of the Health and Safety Code provides:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002; *see also id.* § 611.001 (defining “patient” and “professional”). Upon review, we find some of the submitted information consists of mental health records. Thus, the mental health records we have marked are confidential under section 611.002 of the Health and Safety Code.

With respect to the information protected from public disclosure by section 611.002 of the Health and Safety Code, we find there is a conflict between this statute and the right of access afforded the requestor by former section 51.14(b)(3) of the Family Code. Where general and specific provisions are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See Gov't Code* § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 51.14(b) generally allows the requestor access to her client's juvenile probation records, section 611.002 specifically protects mental health records. We therefore conclude the department must withhold the information we marked pursuant to section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. Additionally, although the department asserts the remaining information is excepted under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and common-law privacy, a specific statutory right of access generally 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); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege or common-law privacy.

In summary, if the department determines the requestor does not intend to use case number 1633 for purposes consistent with the Family Code, then case number 1633 must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. However, if the department determines the requestor intends to use case number 1633 for purposes consistent with the Family Code, then the department must generally release this information to the requestor pursuant to former section 51.14(b) of the Family Code. The department must withhold the information we marked in case numbers 1401 and 1633 pursuant to section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The department must release the remaining information to the requestor pursuant to former section 51.14(b) of the Family Code.²

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 612652

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 51.14(b) (repealed 1995). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, then the department should again seek a ruling from this office.