



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2016

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2016-20307

Dear Mr. Toulet:

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# 629324 (Midland ID# 20200).

The Midland Police Department (the "department") received a request for the criminal history record information ("CHRI") summary of a named individual. You state the department has released some responsive information. You inform us the department will redact certain information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and the previous determination issued to the City of Midland (the "city") in Open Records Letter No. 2015-26022 (2015).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.

Initially, we note the requestor seeks only the CHRI summary of the named individual. *See* Gov't Code § 411.082(2) (CHRI is defined as "information collected about a person by a

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Letter No. 2015-26022 is a previous determination issued to the city authorizing it to withhold dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions”). You have submitted documents that contain information beyond this specific piece of information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release such information in response to the request.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses former section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, former section 51.14(d) 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 conduct occurring before January 1, 1996, are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided, in relevant part:

(d) 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 (repealed 1995). A “child” 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). Upon review, we find some of the responsive information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred before January 1, 1996. *See id.* § 51.023(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). 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), (2), (3)). Therefore, we find former section 51.14(d) is applicable to the information at issue. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct or conduct indicating a need for supervision engaged in by child). Accordingly, the department must generally withhold the information at issue under

section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code.

However, the requestor is a representative of the Probation and Pretrial Services Office of the United States District Court for the Western District of Texas (the “probation office”) and may have a right of access to the information at issue. 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* Gov’t Code § 411.089(a). In addition, section 411.087(a) of the Government Code provides, in pertinent part:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS] [CHRI] maintained by the [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.

Gov’t Code § 411.087(a)(2). 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 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].” Code Crim. Proc. art. 60.01(1). We understand the probation office is a criminal justice agency as defined by section 411.082. *See id.* You inform us the probation office is engaged in the administration of criminal justice under chapter 411 of the Government Code and you state the requestor intends to use the CHRI for a criminal justice purpose. Consequently, pursuant to section 411.087(a)(2) of the Government Code, the requestor has a general right of access to otherwise confidential information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Thus, there is a conflict between the confidentiality provided by former section 51.14(d) 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 former section 51.14(d) 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 former section 51.14(d) of the Family Code. Therefore, notwithstanding former section 51.14(d), pursuant to section 411.087(a)(2) of the Government Code, the department must make available to this requestor the CHRI at issue.

Section 552.101 of the Government Code also 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 the remaining responsive information involves 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”). Thus, the remaining responsive information is generally confidential under section 58.007(c) of the Family Code.

However, as noted above, the requestor is a representative of the probation office. Section 58.007(e) 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). Again, we understand the probation office is a criminal justice agency as defined by section 411.082. *See* Gov’t Code § 411.082(3)(A). Therefore, the requestor has a right of access to the remaining responsive 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. Thus, the department must release the remaining responsive information to this requestor. As you raise no further exceptions to disclosure, the responsive information must be released.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 629324

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information being released. *See* Gov’t Code § 411.089; Fam. Code § 58.007(e). Thus, if the department receives another request for this information from a different requestor, then the department must again seek a decision from this office.