



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2010

Mr. Joseph J. Gorfida
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2010-00472

Dear Mr. Gorfida:

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# 365317 (Richardson file number 09-732).

The Richardson Police Department (the "department") received a request from an investigator with the Texas Education Agency ("TEA") for information pertaining to a named individual and a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that

information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). A compilation of an individual's criminal history is also highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, we note information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf. Gov't Code* § 411.082(2)(B).

Upon review, we believe that withholding only identifying information in report 08-105100 from the requestor would not preserve the victim's common law right to privacy. We conclude, therefore, the department must withhold report 08-105100 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We further find the information we have marked in reports 09-088215, 09-026274, and 09-093072 is highly intimate or embarrassing and not of legitimate public interest. The department must withhold report 08-105100 and the information we have marked in reports 09-026274 and 09-093072 under section 552.101 of the Government Code in conjunction with common-law privacy. While the information we have marked in report 09-088215 under section 552.101 in conjunction with common-law privacy is generally confidential, we will consider the requestor's possible right of access to this information later in this ruling.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]"¹ *Id.*

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license driver's license numbers under section 552.130 and e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision. However, a governmental body may not withhold those categories of information when other law authorizes the release of such information. *See* Open Records Decision 684 at 14 (2009).

§ 552.130(a)(1), (2). Therefore, the department must withhold the information you have marked in reports 09-026274 and 09-091898 under section 552.130 of the Government Code. While the information you have marked in report 09-088215 under section 552.130 is generally confidential, we will consider the requestor's possible right of access to this information later in this ruling.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). You do not indicate the owner of the marked e-mail address has consented to release, and this address does not appear to be of a type excluded by section 552.137(c). While we agree the information you have marked in report 09-088215 under section 552.137 is generally confidential, we will consider the requestor's possible right of access to this information later in this ruling.

We note you have marked a social security number in report 09-088215. 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 under the Act. *Id.* § 552.147(b). While we agree the information you have marked in report 09-088215 is generally subject to section 552.147, we will consider the requestor's possible right of access to this information.

We now consider the requestor's possible right of access to report 09-088215 in its entirety. Section 22.082 of the Education Code provides that TEA "may obtain from any law enforcement or criminal justice agency all criminal history record information ["CHRI"] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 [of the Education Code]." Educ. Code § 22.082. In this instance, the requestor is an investigator for TEA, which has assumed the duties of the SBEC.² The requestor states TEA is conducting an investigation of the named individual, who either has applied for or currently holds educator credentials. Subchapter C of chapter 22 of the Education Code and section 22.082 in particular concern access to "criminal history records" of school district personnel. *See id.* ch. 22, subch. C. Accordingly, TEA has a right of access under section 22.082 to all records contained in a closed criminal investigation file that involves the named individual as a suspect or arrestee. *Id.* § 22.082. You have submitted one report, 09-088215, that involves the named individual as a suspect. You do not indicate whether this report is contained in a closed criminal investigation file. Therefore, we must rule in the alternative. To the extent report number 09-088215 is contained in a closed criminal

²SBEC's administrative functions and services were transferred to the TEA, effective September 1, 2005. H.B. 1116, 79th Leg., R.S. (2005)

investigation file, TEA has a statutory right of access to this report pursuant to section 22.082. However, in this event, because section 22.082 authorizes the requestor to obtain report number 09-088215 in its entirety while sections 552.101, 552.130, 552.137, and 552.147 of the Government Code except from disclosure portions of this report, section 22.082 conflicts with sections 552.101, 552.130, 552.137, and 552.147. Where statutes are in irreconcilable conflict, the specific provision 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 id.* § 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.).

Sections 552.101, 552.137, and 552.147 are general exceptions to disclosure under the Act. As a general rule, the Act's general exceptions to required public disclosure are not applicable to information that a statute other than the Act expressly makes public. *See Open Records Decision No. 623 at 3 (1994)*. We therefore hold the right of access afforded to TEA investigators under section 22.082 prevails over section 552.101 in conjunction with common-law privacy, section 552.137, and section 552.147. *See Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common law principle); *Open Records Decision Nos. 613 at 4 (1993)* (exceptions in Act cannot impinge on statutory right of access to information), *451 at 4 (1986)* (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). However, section 552.130 of the Government Code specifically protects Texas motor vehicle record information and contains its own access provisions. Therefore, we find section 552.130 is not a general exception under the Act. Furthermore, because section 552.130 specifically protects specified information while section 22.082 provides TEA with a general right of access, we find the confidentiality provision found in section 552.130 is more specific than the general right of access provided to TEA under section 22.082. Accordingly, to the extent report number 09-088215 is contained in a closed criminal investigation file, we conclude the department must withhold the information within this report marked under section 552.130 of the Government Code, but must release the remainder of this report to this requestor pursuant to section 22.082. Conversely, to the extent report number 09-088215 is not contained in a closed criminal investigation file, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy, section 552.130, and section 552.137, and may withhold the information you have marked under section 552.147.

In summary, (1) the department must withhold report number 08-105100 in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department must withhold the information in reports 09-026274, 09-091898, and 09-093072 we have marked under sections 552.101 in conjunction with common-law privacy and section 552.130; (3) the department must release the remainder of reports 09-026274, 09-

091898, and 09-093072; (4) to the extent report number 09-088215 is contained in a closed criminal investigation file, the department must withhold the information within this report marked under section 552.130 of the Government Code, but must release the remainder of this report to this requestor pursuant to section 22.082; and (5) conversely, to the extent report number 09-088215 is not contained in a closed criminal investigation file, the department must withhold the information we have marked under sections 552.101 in conjunction with common-law privacy, 552.130, and 552.137, and may withhold the information you have marked under section 552.147, but must release the remainder of this report to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TRW/rl

Ref: ID# 365317

Enc. Submitted documents

cc: Requestor
(w/o enclosures)