



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2010

Ms. Jordan Hale
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2010-12724

Dear Ms. Hale:

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# 391090 (PIR No. 10-27862).

The Office of the Attorney General (the "OAG") received a request for information concerning the investigation of the Texas Federation of Families for Children's Mental Health. The OAG asserts the information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.¹

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The OAG argues section 552.108(a)(1) is applicable because the information it marked relates to a criminal case conducted by its Criminal Investigations Division (“CID”). CID provided the information to the Travis County District Attorney’s Office (the “D.A.”), and the D.A. requests the OAG withhold the information because release would interfere with the D.A.’s pending investigation. Based upon this representation, we conclude release of the information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the information the OAG marked in Exhibit B is subject to section 552.108(a)(1) of the Government Code.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co.* Thus, with the exception of the basic front page offense and arrest information, the OAG may withhold the information it marked from disclosure based on section 552.108(a)(1).²

Next, we address the OAG’s section 552.101 assertion for the one document that it marked as protected under this exception only. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses confidentiality statutes such as section 531.1021 of the Government Code, which provides in relevant part as follows:

(g) All information and materials subpoenaed or compiled by the [Office of the Inspector General of the Health and Human Services Commission (the “OIG”)] in connection with an audit or investigation are confidential and not subject to disclosure under [the Act], and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the [OIG] or its employees or agents involved in the audit or investigation conducted by the [OIG], except that this information may be disclosed to the office of the attorney general, the state auditor’s office, and law enforcement agencies.

(h) A person who receives information under Subsection (g) may disclose the information only in accordance with Subsection (g) and in a manner that is

²Because section 552.108(a)(1) is dispositive, we do not address the OAG’s other arguments.

consistent with the authorized purpose for which the person first received the information.

Id. § 531.1021(g), (h). The OAG explains the OIG compiled the document at issue in connection with the OIG's investigation and provided the information to the OAG to use in the OAG's criminal investigation. As the recipient, the OAG may disclose the information only in accordance with subsection (g). Because the requestor is not a party to whom release is permitted under subsection (g), we find the document is generally confidential under section 531.1021(g).

However, the document is a final order from the Appeals Division of the Texas Health and Human Services Commission. The order contains findings of fact, conclusions of law, and an order. Section 2001.004 of the Government Code states "a state agency shall . . . make available for public inspection all final orders, decisions, and opinions." *Id.* § 2001.004. Therefore, the order is public by statute.

Thus, although the order is generally confidential under section 531.1021(g) of the Government Code, section 2001.004 of the Government Code makes it public. Consequently, there is a conflict of laws between section 531.1021(g) of the Government Code and section 2001.004 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision prevails over the general. *See id.* § 311.026(b); *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); *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, because section 2001.004 of the Government Code specifically governs access to a final order, this provision is more specific than the general confidentiality section 531.1021(g) of the Government Code provides for the OIG's investigation records. Thus, section 2001.004 of the Government Code prevails over the more general confidentiality provision of section 531.1021(g) of the Government Code. Accordingly, the OAG must release the final order pursuant to section 2001.004 of the Government Code.

In summary, the OAG must release the final order pursuant to section 2001.004 of the Government Code. With the exception of basic information, which the OAG must release, the OAG may withhold the remainder under section 552.108(a)(1) of the Government 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.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,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', written in a cursive style.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 391090

Enc: Submitted documents

c: Requestor
(w/o enclosures)