



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2010

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368

OR2010-17428

Dear Ms. Chang:

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# 400227 (PIR# 17040).

The Houston Police Department (the "department") received a request for all documents regarding the investigation into the death of a named individual, including internal affairs documents. You state you will release some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date the department received the 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 this request.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Exhibits 2, 3, and 5 are part of completed investigations that are subject to section 552.022(a)(1). The department must release this information pursuant to section 552.022 unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. *See id.* You claim this information is subject to section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not "other law" that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the department may not withhold Exhibits 2, 3, and 5 pursuant to section 552.103 of the Government Code. However, we will consider your argument under section 552.108 for the information in Exhibits 2, 3, and 5. We will also consider your arguments under sections 552.101, 552.103, and 552.108 for the remaining information not subject to section 552.022(a)(1).

Next, we consider your argument under section 552.101 of the Government Code for Exhibit 4. Section 552.101 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. The City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 of the Local Government Code provides in relevant part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or

(3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to disciplinary action against a fire fighter or police officer to the director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You state Exhibit 4 consists of records of an internal investigation of alleged misconduct on the part of a police officer. You state the investigation remains in progress, and thus no disciplinary action has been taken. You state Exhibit 4 is maintained in the department's investigatory files. Further, you state the information does not meet the requirements of section 143.1214(c) for inclusion in the police officer's civil service personnel file. *See id.* § 143.1214(c); *see also id.* § 143.089(a)-(g). You state the requestor is not a representative of another law enforcement agency, a fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Based on your representations and our review, we agree Exhibit 4 is generally confidential under section 143.1214 of the Local Government Code.

We note, however, Exhibit 4 includes emergency medical services ("EMS") records to which the requestor may have a right of access. Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex,

occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health & Safety Code. *See id.* §§ 773.091-.094. Exhibit 4 contains records created by EMS personnel. Upon review, we find section 773.091 is applicable to the information we have marked. We note records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information[.]” *Id.* §§ 773.092(e)(4), .093. Section 773.093 provides a consent for release of EMS records must be written and signed by the patient, authorized representative, or personal representative and must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released. *Id.* § 773.093(a). Thus, if the department receives proper consent, the marked EMS records must generally be released in their entirety in accordance with chapter 773 of the Health and Safety Code.

Although the submitted EMS records are generally confidential under section 143.1214 of the Local Government Code, section 773.092 of the Health & Safety Code may provide the requestor with a right of access to the EMS records we have marked. Therefore, there is a conflict between the confidentiality provision of section 143.1214 of the Local Government Code and the release provision of section 773.092 of the Health & Safety Code. Where general and specific statutes 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); *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.). Although section 143.1214 of the Local Government Code generally makes confidential the entire investigatory file created and maintained by the department, section 773.092 of the Health and Safety Code specifically applies to the release of EMS records made by EMS personnel. Therefore, we find section 773.092 of the Health & Safety Code is more specific than the confidentiality provision of section 143.1214 of the Local Government Code. Furthermore, although you raise sections 552.103 and 552.108 for the EMS records, the general exceptions found in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on a statutory right of access to information); *see also* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, notwithstanding the provisions of section 143.1214 of the Local Government Code, we conclude the EMS records in Exhibit 4, which we have marked, must be released to the requestor pursuant to section 773.092(e) of the Health and Safety Code, if the department

receives the proper consent that complies with section 773.093(a). In that event, the department must withhold the remaining information in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. If the department does not receive the proper consent, then Exhibit 4 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code.<sup>1</sup>

Next, we address your remaining argument for Exhibits 2, 3, and 5. We note the information at issue includes a CR-3 report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). However, section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.<sup>2</sup> In this instance, the requestor has provided the department with the date of the accident and the name of a person involved in the accident pursuant to section 550.065(c)(4). As noted above, the general exceptions found in the Act cannot impinge on a statutory right of access to information. *See* ORDs 613 at 4 (1993), 451 at 4 (1986). Accordingly, the CR-3 report, which we have marked, must be released pursuant to section 550.065(c)(4).

The information at issue also contains the results of an analysis of a blood specimen. Section 724.018 of the Transportation Code provides, “[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person’s attorney.” Transp. Code § 724.018. In this instance, the requestor is the attorney for the estate of the deceased individual whose blood specimen is at issue. Although you seek to withhold the information at issue under section 552.108 of the Government Code, as noted above, the general exceptions found in the Act cannot impinge on a statutory right of access to information. *See* ORDs 613 at 4, 451 at 4. Therefore, the department must release the results of the analysis of the blood specimen, which we have marked, to this requestor pursuant to section 724.018 of the Transportation Code.

The information at issue also contains fingerprints whose public availability is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.003 of the

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

<sup>2</sup>*See* Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

Government Code provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Thus, as an attorney for the deceased individual’s estate, the requestor has a right of access to the individual’s fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). As noted above, the general exceptions found in the Act cannot impinge on a statutory right of access to information. *See* ORDs 613 at 4, 451 at 4. Therefore, the department must release the fingerprints we have marked to this requestor pursuant to section 560.002 of the Government Code.

You claim section 552.108(a)(2) of the Government Code for the remaining information in Exhibits 2, 3, and 5. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information in Exhibits 2, 3, and 5 relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the remaining information in Exhibits 2, 3, and 5.

However, as you acknowledge, 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 Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the remaining information in Exhibits 2, 3, and 5 under section 552.108(a)(2).

In summary, if the department does not receive proper consent for the submitted EMS records, then Exhibit 4 must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. If the department does receive proper consent, then the department must release the submitted EMS records pursuant to section 773.092 of the Health & Safety Code and must withhold the remaining information in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The department must

release to this requestor: (1) the marked CR-3 report pursuant to section 550.065(c)(4) of the Transportation Code, (2) the marked results of the analysis of the blood specimen pursuant to section 724.018 of the Transportation Code, and (3) the marked fingerprints pursuant to section 560.002 of the Government Code. With the exception of the basic information, the department may withhold the remaining information in Exhibits 2, 3, and 5 under section 552.108(a)(2) 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tp

Ref: ID# 400227

Enc. Submitted documents

c: Requestor  
(w/o enclosures)