



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 1, 2011

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2011-04513

Dear Mr. Weir:

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# 413355 (COSA File No. 2010-7400).

The San Antonio Police Department (the "department") received a request for six categories of information pertaining to offense report numbers 80162800/01, 80164321/01, and 80207354/01, and, additionally, any supplemental reports completed after a specified date for offense report number 0568791. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the department received the request for information on January 7, 2011. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. We understand the department was closed for business on January 17, 2011. Therefore, the department's ten-business-day deadline to request a ruling was January 24, 2011. The department did not submit its request for a ruling to this office until January 25,

2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents via first class United States mail, common or contract carrier, or interagency mail). Accordingly, the department did not request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, it does not constitute a compelling reason to withhold information. Therefore, the department may not withhold the submitted information under section 552.108 of the Government Code. However, we note portions of the submitted information are subject to sections 552.101, 552.130, and 552.136 of the Government Code. Because sections 552.101, 552.130, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider these exceptions for the submitted information.

Next, we note the requestor is a representative of the Texas Department of State Health Services (the "DSHS"). The requestor has informed the department that DSHS seeks the requested information as part of an investigation conducted pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 provides the DSHS or its representative "is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code]." Health & Safety Code § 773.0612(a). DSHS states the submitted information pertains to an emergency medical technician licensed under chapter 773 of the Health and Safety Code. DSHS states the information is needed to enforce section 157.36(b) of title 25 of the Texas Administrative Code. *See* 25 T.A.C. § 157.36(b). Because the submitted information is directly related to emergency medical services personnel and the requestor is conducting an investigation under chapter 773, we conclude section 773.0612 of the Health and Safety Code applies to the submitted information.

Portions of the submitted information are subject to section 552.101 of the Government Code in conjunction with common-law privacy. However, a specific statutory right of access generally prevails over the common law. See *Cash Am. Int'l Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (statute abrogates common-law principle only when its express terms or necessary implications clearly indicate Legislature's intent to do so and requires clear repugnance between common-law and statutory causes of action); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no conflicting or controlling statutory law). We note the submitted information contains information subject to section 552.136. This office has found that a specific statutory right of access also prevails over general exceptions to disclosure under the Act. See Open Records Decision No. 613 at 4 (1993) (exception in Act cannot impinge on statutory right of access to information), 451 at 4 (1986). Because the requestor in this instance has a statutory right of access to the information at issue, the department may not withhold this information from the requestor pursuant to section 552.101 of the Government Code in conjunction with common-law privacy or section 552.136 of the Government Code.

We note the submitted information contains Texas motor vehicle record information subject to section 552.130 of the Government Code. This section excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Thus, the department must generally withhold the information we have marked under section 552.130 of the Government Code. We find there is a conflict between the confidentiality of section 552.130 of the Government Code and the right of access afforded to DSHS under section 773.0612 of the Health and Safety 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 that 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.). Section 773.0612 gives a general right of access to all information related to EMS personnel being investigated by the DSHS. In contrast, section 552.130 makes confidential information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state and contains its own release provisions. Gov't Code § 552.130. Therefore, we find the confidentiality provision of section 552.130 is more specific than the access provision of section 773.0612. Furthermore, section 552.130 was passed in a later legislative session than section 773.0612.¹ Therefore, because section 552.130 is the more specific statute and was enacted later in time, the department must withhold the Texas motor vehicle record

¹Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government Code).

information we have marked under section 552.130 of the Government Code.² As you raise no further exceptions to disclosure, the remaining information must be released to this requestor.³

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 413355

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We 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 plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.