



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 17, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2011-06934

Dear Ms. Rangel:

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# 417798.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all reports pertaining to a named physician. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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 public concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). A compilation of an individual's criminal history record information is 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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's own criminal history). Moreover, we find

that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request is for all sheriff reports pertaining to the physician. This request requires the sheriff to compile unspecified law enforcement records concerning the physician's criminal history. Thus, to the extent the sheriff maintains law enforcement records depicting the physician as a suspect, arrestee, or criminal defendant, those records are a compilation of criminal history protected under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the requestor identifies himself as a senior investigator for the Texas Medical Board (the "board"). Section 153.006 of the Occupations Code provides in part that "[t]he [board] may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant." Occ. Code § 153.006(a). In this instance, the board seeks access to criminal records pertaining to the physician. Furthermore, the board's statutory right of access to a licensed physician's criminal records under section 153.006 prevails over general exceptions to disclosure under the Act and common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).

However, the submitted records also contain the physician's fingerprints. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprints. Therefore, we find the marked fingerprints are confidential under section 560.003 of the Government Code.

The remaining information contains Texas driver's license and Texas motor vehicle record information subject to section 552.130 of the Government Code. This section provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *See id.* § 552.130(a)(1), (2). Accordingly, we find the marked Texas driver's license and Texas motor vehicle record information is confidential under section 552.130 of the Government Code.

Thus, there is a conflict between the confidentiality provided by section 560.003 of the Government Code and the right of access provided by section 153.006 of the Occupations 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 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 153.006 generally provides the board access to criminal record reports regarding a license holder or license applicant. *See* Occ. Code § 153.006(a). However, section 560.003 specifically protects biometric identifiers. *See* Gov't Code § 560.003. Thus, section 560.003 is the more specific statute. Furthermore, section 560.003 was enacted later than section 153.006. *See* Act of May 26, 2001, 77th Leg., R.S., ch. 634, § 2, 2001 Tex. Gen. Laws 1195, 1196 (codified as section 560.003 of Government Code); Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7, 31 (enacting statutory predecessors to section 153.006 of Occupations Code). Accordingly, notwithstanding section 153.006, the sheriff must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with 560.003 of the Government Code. *See also* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission).

There is also a conflict between the specific confidentiality provided to Texas motor vehicle record information by section 552.130 and the general right of access provided by section 153.006. As previously noted, a statutory right of access prevails over the Act's general exceptions to disclosure. *See* ORD Nos. 613 at 4, 451. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. *See* Gov't Code § 552.130(b) (information described by section 552.130(a) may only be released in manner authorized by chapter 730 of Transportation Code). Furthermore, although section 153.006 was enacted later than section 552.130, there is no evidence the legislature intended section 153.006 to prevail over section 552.130. *See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7, 31. We therefore conclude that, notwithstanding section 153.006, the sheriff must withhold the information marked under section 552.130 of the Government Code.¹

In summary, the sheriff must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The marked Texas driver's license and Texas motor vehicle record information must be withheld

¹Should the sheriff receive another request for this same information from a person who would not have a right of access to the information, the sheriff should re-submit this information and request another decision. *See* Gov't Code §§ 552.301(a), .302.

under section 552.130 of the Government Code. The remaining information must be released pursuant to section 153.006 of the Occupations 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 417798

Enc. Submitted documents

c: Requestor
(w/o enclosures)