



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2011

Mr. Tommy L. Coleman
Assistant District Attorney
Williamson County District Attorney's Office
405 South Martin Luther King #1
Georgetown, Texas 78626

OR2011-08766

Dear Mr. Coleman:

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# 421141.

The Williamson County District Attorney's Office (the "district attorney") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.¹

Initially, we note the compact discs labeled 495 and 496 are not responsive because they do not pertain to the specified incident. This ruling does not address the public availability of non-responsive information, and the district attorney is not required to release non-responsive information in response to this request.

Next, we note the responsive information consists of a completed investigation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides a completed investigation is public information unless it is confidential by other law or excepted from

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.

disclosure under section 552.108. Gov't Code § 552.022(a)(1). Section 552.111 is a discretionary exception and does not make information confidential; therefore, the district attorney may not withhold any of the submitted information under this exception. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that “[t]he Texas Rules of Civil Procedure . . . are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the submitted responsive information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the information at issue and the information may not be withheld on that basis. However, pursuant to section 552.022(a)(1), we will consider your claim under section 552.108 of the Government Code. Further, as sections 552.101, 552.130, 552.132, 552.1325, and 552.136 of the Government Code constitute “other law” that makes information confidential for the purposes of section 552.022, we will also consider the applicability of those sections.²

We next address your arguments under section 552.108 of the Government Code for the submitted information, as it is the most encompassing exception you raise. We understand you to assert that the responsive information is excepted under section 552.108 as interpreted by *Holmes v. Morales*. *See Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In *Holmes*, the Texas Supreme Court held that the plain language of section 552.108 did not require a governmental body to show that release of the information would unduly interfere with law enforcement. *Id.* at 925. The *Holmes* case further held that “section 552.108’s plain language makes no distinction between a prosecutor’s ‘open’ and ‘closed’ criminal litigation files” and concluded that the Harris County District Attorney may withhold his closed criminal litigation files under that exception. *Id.* Subsequent to the interpretation of section 552.108 in *Holmes*, the Seventy-fifth Legislature amended section 552.108 extensively. *See* Act of June 1, 1997, 75th Leg., R.S., ch. 1231, § 1, 1997 Tex. Gen. Laws 4697. As amended, section 552.108 now expressly requires a governmental body to explain, among other things, how release of the information would interfere with law enforcement. Accordingly, the court’s ruling in *Holmes*, which construed former section 552.108, is superseded by the amended section, which now reads as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

²The Office of the Attorney General will raise mandatory exceptions, such as section 552.136 of the Government Code, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body claiming 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). You have not stated that the responsive information pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. In fact, you specifically state that this information pertains to a concluded case in which the defendant pleaded guilty and was sentenced to seven years in prison. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the responsive information and no information may be withheld on that basis.

Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

In this instance, you have provided no argument as to how section 552.108(b)(1) applies to the responsive information. Thus, we find you have failed to meet your burden to demonstrate how the release of the responsive information would interfere with law enforcement and crime prevention. Accordingly, the district attorney may not withhold any of the responsive information under section 552.108(b)(1).

A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. As stated above, you state that the prosecution of this matter concluded with the defendant pleading guilty and being sentenced to seven years of incarceration. Accordingly, the investigation and prosecution of this matter resulted in a conviction. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the responsive information. Section 552.108(a)(3) is also inapplicable, as the responsive information does not relate to a threat against a police officer. *See* Gov't Code § 552.108(a)(3).

You contend that documents 157, 158, 175 through 191, 247, 283, 321, and 322 reflect the mental impressions or legal reasoning of the prosecutor representing the state. *See id.* § 552.108(a)(4), (b)(3). Upon review, we agree the documents at issue were either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflect the mental processes or legal reasoning of an attorney representing the state. Therefore, the district attorney may withhold documents 157, 158, 175 through 191, 247, 283, 321, and 322 under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). However, you cite no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district attorney to obtain or maintain a social security number. Consequently, you have failed to demonstrate the applicability of section 405 of title 42 of the United States Code to any social security numbers within the responsive documents, and no portion of the responsive information may be withheld under section 552.101 of the Government Code on that basis. We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing a social security number, you should ensure it was not obtained or is not maintained by the district attorney pursuant to any provision of law enacted on or after October 1, 1990.³

Section 552.101 of the Government Code also encompasses title 28, part 20 of the Code of Federal Regulations, which governs the release of criminal history record information (“CHRI”) that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose.

³Section 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. *See* Gov’t Code § 552.147(b). However, we note the requestor has a right of access to his client’s social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

Id. § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. We note information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). Upon review, the information we have marked consists of CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.⁴ However, the remaining information you have indicated does not consist of CHRI and may not be withheld under section 552.101 of the Government Code on that basis.

The district attorney also seeks to withhold CHRI under article 60.03 of the Code of Criminal Procedure, which provides, in pertinent part:

(a) Criminal justice agencies . . . are entitled to access the data bases of the Department of Public Safety, the Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Department of Criminal Justice in accordance with applicable state or federal law or regulations. The access granted by this subsection does not grant an agency . . . the right to add, delete, or alter data maintained by another agency.

...

(c) . . . a criminal justice agency . . . may [not] disclose to the public information in an individual's criminal history record if the record is protected by state or federal law or regulation.

Crim. Proc. Code art. 60.03. The remaining information the district attorney seeks to withhold pursuant to article 60.03 does not constitute criminal history information for purposes of that article and, therefore, the district attorney may not withhold it under section 552.101 on that basis.

We note the remaining information includes a fingerprint. Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See Gov't Code* §§ 560.001 (defining "biometric identifier" to include fingerprints and records of hand geometry), .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 the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint. Therefore, the district attorney must withhold the fingerprint we marked under

⁴As our ruling is dispositive for the information we marked, we need not address your remaining arguments against its disclosure.

section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses 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 emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services 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), emergency medical services (“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. 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). Upon review, we find documents 121 through 124, 390, 391, 393 through 395, 397 through 400, 402, 404 through 406, and 409 through 417 constitute EMS records of the identity, evaluation, or treatment of a patient and are confidential under section 773.091. Therefore, the district attorney must withhold documents 121 through 124, 390, 391, 393 through 395, 397 through 400, 402, 404 through 406, and 409 through 417 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the district attorney receives the required written consent for release under sections 773.092 and 773.093.⁵ However, we find the district attorney has failed to demonstrate how any of the remaining information at issue constitutes EMS records. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

⁵As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which provides confidentiality for medical records. Section 159.002 of the MPA provides, in part, the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990). Upon review, we find that documents 476 through 492 consist of medical records and information taken from medical records that may only be released in accordance with the MPA.⁶ However, we find you have failed to demonstrate how any of the remaining information at issue constitutes medical records for purposes of the MPA. Accordingly, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses section 181.006 of the Health and Safety Code. Section 181.006 states that:

For a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

⁶As our ruling is dispositive for this information, we need not address your remaining argument against the disclosure.

Health & Safety Code § 181.006. Section 181.001(b)(2) defines “[c]overed entity,” in part, as “any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You do not inform us the district attorney is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate that any of the remaining information is subject to section 181.006 of the Health and Safety Code. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Next, you claim the grand jury subpoenas in documents 120 and 170 through 173 are subject to article 20.02(a) of the Code of Criminal Procedure. Section 552.101 of the Government Code also encompasses article 20.02(a), which provides that “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). Article 20.02, however, does not define “proceedings” for purposes of subsection (a). Therefore, we have reviewed case law for guidance and found that Texas courts have not often addressed the confidentiality of grand jury subpoenas under article 20.02. Nevertheless, the court in *In re Reed* addressed the issue of what constitutes “proceedings” for purposes of article 20.02(a) and stated that although the court was aware of the policy goals behind grand jury secrecy, the trial court did not err in determining the grand jury summonses at issue were not proceedings under article 20.02. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.). The court further stated that the term “proceedings” could “reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations.” *Reed*, 227 S.W.3d at 276. The court also discussed that, unlike federal law, article 20.02 does not expressly make subpoenas confidential. *See id.*; Fed. R. Crim. P. 6(e)(6).

Subsequent to the ruling in *Reed*, the 80th Legislature, modeling federal law, added subsection (h) to article 20.02 to address grand jury subpoenas. *See* Crim. Proc. Code art. 20.02; FED. R. CRIM. P. 6(e)(6) (“Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.”). Article 20.02(h) states that “[a] subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” Crim. Proc. Code art. 20.02(h). This provision, however, does not define or explain what factors constitute “necessary to prevent the unauthorized

disclosure of a matter before the grand jury.” *Id.* Because subsection (h) is modeled on federal law, we reviewed federal case law for guidance on a definition or explanation of the factors that would constitute “necessary to prevent the unauthorized disclosure of a matter before the grand jury” for the purposes of keeping grand jury subpoenas secret. Our review of federal case law revealed that federal courts have ruled inconsistently on the issue of whether or not grand jury subpoenas must be kept secret. FED. R. CRIM. P. 6(e)(6) advisory committee’s note (stating federal case law has not consistently stated whether or not subpoenas are protected by rule 6(e)). Furthermore, even if we considered article 20.02 to be a confidentiality provision, information withheld under this statute would only be secret “for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” Crim. Proc. Code art. 20.02(h).

You inform us that the criminal case at issue concluded with a conviction. Additionally, you have not submitted any arguments explaining how the matter upon which the submitted subpoenas were based is still “before the grand jury” to warrant keeping the subpoenas secret. Therefore, upon review of article 20.02 and related case law, it is not apparent, and you have not otherwise explained, how this provision makes the submitted grand jury subpoenas in documents 120 and 170 through 173 confidential. *See* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Consequently, the submitted subpoenas in documents 120 and 170 through 173 may not be withheld under section 552.101 in conjunction with article 20.02 of the Criminal Code of Procedure.

Section 552.101 also encompasses article 42.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 42.12, § 9(j). Article 42.12 of the Code of Criminal Procedure is applicable to pre-sentence investigation reports and provides, in part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (i) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only:

(1) to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section;

(2) pursuant to Section 614.017, Health and Safety Code; or

(3) as directed by the judge for the effective supervision of the defendant.

Crim. Proc. Code art. 42.12, § 9(j). Upon review we agree the pre-sentence investigation report contained in documents 429 through 436 must be withheld under section 552.101 of the Government Code in conjunction with article 42.12 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. See Open Records Decision No. 545 (1990). The requestor represents an individual whose privacy interests are at issue. Therefore, pursuant to section 552.023 of the Government Code, the requestor has a right of access to information pertaining to his client, and it may not be withheld from him under section 552.101 on the basis of common-law privacy. See Gov't Code § 552.023(b) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Upon review we find that the information we have marked, which does not pertain to the requestor's client, is highly intimate or embarrassing and not of legitimate public interest. Thus, the district attorney must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has applied privacy to protect certain information about incarcerated individuals. See Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976), as authority, this office held those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure." This office ruled this right would be violated by the release of information that identifies those correspondents because such a release would discourage correspondence. See ORD 185. The information at issue in this ruling was the identities of individuals who had corresponded with inmates. In Open

Records Decision No. 185, our office found that “the public’s right to obtain an inmate’s correspondence list is not sufficient to overcome the first amendment right of the inmate’s correspondents to maintain communication with him free of the threat of public exposure.” *Id.* Implicit in this holding is the fact that an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORD 430. Further, we recognized inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See also* ORD 185. The rights of those individuals to anonymity was found to outweigh the public’s interest in this information. *Id.*; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Accordingly, the district attorney must withhold the information we have marked under section 552.101 in conjunction with constitutional privacy.

You claim documents 292 through 296 and 301 through 306 are subject to section 550.065(b) of the Transportation Code, which is also encompassed by section 552.101 of the Government Code and states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Upon review, we find documents 155 and 156, 292 through 297, and 301 through 306 consist of CR-3 crash report forms that were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer’s accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See 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 of the items of information specified by the statute. *Id.* The requestor, in this instance, has provided the district attorney with two of the three specified items of information. Thus, the district attorney must generally release the accident reports in documents 155 and 156, 292 through 297, and 301 through 306 to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

You also contend, however, portions of the submitted CR-3 report forms, as well as portions of the remaining responsive information, are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, registration, or personal identification document issued by a Texas agency is excepted from public release. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130). Upon review, we find the CR-3 report forms contain information that is generally confidential under section 552.130.

A statutory right of access generally prevails over the Act's general exceptions to disclosure. See Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act in applicable to information that statutes expressly make public), 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 exception to disclosure under the Act). However, because section 552.130 has its own access provisions, we conclude that section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 550.065 of the Transportation Code and the confidentiality provided under section 552.130. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. See *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).

In this instance, section 550.065(c)(4) specifically provides access only to accident reports completed pursuant to chapter 550 or section 601.004 of the Transportation Code, while section 552.130 generally excepts Texas motor vehicle record information maintained in any context. Thus, we conclude the access to accident reports provided under section 550.065(c)(4) is more specific than the general confidentiality provided under section 552.130. Accordingly, the district attorney may not withhold any portion of the accident reports under section 552.130. Therefore, the district attorney must release the submitted CR-3 accident report forms in their entirety to this requestor pursuant to section 550.065(c)(4). As noted above, the requestor is the legal representative of one of the individual's whose information is at issue. As such, he has a right of access to the information pertaining to his client under section 552.023 of the Government Code and it may not be withheld under section 552.130. See Gov't Code § 552.023(a). Therefore, the district attorney must withhold the Texas motor vehicle record information pertaining to individuals who are not represented by the requestor, which we have marked in the remaining information, and the portions of photographs we have indicated in the submitted compact discs under section 552.130 of the Government Code.

You assert portions of the remaining information are excepted under section 552.132 of the Government Code, which provides, in relevant part, the following:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

Id. § 552.132(b), (d). The submitted information is held by the district attorney, not the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation the victims are employees of the district attorney who elected in accordance with section 552.132(d). We, therefore, conclude the district attorney may not withhold any portion of the remaining information under section 552.132 of the Government Code.

You also assert portions of the remaining information are excepted under section 552.1325 of the Government Code, which provides as follows:

(a) In this section:

- (1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.
- (2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

- (1) the name, social security number, address, and telephone number of a crime victim; and
- (2) any other information the disclosure of which would identify or tend to identify the crime victim.

Id. § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). A portion of the information you seek to withhold includes identifying information of victims contained in documents that were submitted for the purpose of preparing victim impact statements. Section 552.1325 is intended to protect the victims' privacy. *See* House Comm. on State

Affairs, Bill Analysis, Tex. S.B. 1015, 78th Leg., R.S. (2003) (provision intended to protect "best interests" of crime victims). In this instance, the requestor is an attorney who represents one of the crime victims. Thus, pursuant to section 552.023, he has a right of access to this information that would ordinarily be withheld to protect the his client's privacy. Gov't Code § 552.023(a); *see* ORD 481 at 4. Accordingly, we conclude the identifying information we marked pertaining to the victims who are not the requestor's client is confidential under section 552.1325 of the Government Code.

We note the remaining responsive information contains a partial credit card number and an insurance policy number. Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Thus, the district attorney must withhold the information we have marked pursuant to section 552.136 of the Government Code.

In summary, the district attorney may withhold documents 157, 158, 175 through 191, 247, 283, 321, and 322 under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law, and the fingerprint we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district attorney must withhold documents 121 through 124, 390, 391, 393 through 395, 397 through 400, 402, 404 through 406, and 409 through 417 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g), unless the district attorney receives the required written consent for release under sections 773.092 and 773.093. Documents 476 through 492 may only be released in accordance with the MPA. The district attorney must withhold documents 429 through 436 under section 552.101 of the Government Code in conjunction with section 9(j) of article 42.12 of the Code of Criminal Procedure. The district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law and constitutional privacy. The district attorney must release the CR-3 accident reports in documents 155 and 156, 292 through 297, and 301 through 306 to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. The district attorney must withhold the information we have marked and the portions of photographs we have indicated under section 552.130 of the Government Code. The district attorney must withhold the victim- identifying information we have marked under section 552.1325 of the Government Code. The district attorney must withhold the information we

have marked pursuant to section 552.136 of the Government Code.⁷ The district attorney must release the remaining responsive information.⁸

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 421141

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

⁷This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code; a Texas driver's license number, a Texas license plate number, and the portion of a photograph that reveals a Texas license plate number under section 552.130; and credit card and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁸We note the information being released in this instance contains confidential information to which the requestor has a special right of access. If the district attorney receives another request for this same information from a different requestor, the district attorney must again seek a ruling from this office.