



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2011

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2011-12959

Dear Mr. Bounds:

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# 429145.

The Corpus Christi Police Department (the "department") received a request for any police and incident reports, booking information, custody information/status, offense reports including officer's narrative, written or recorded statements, arrest warrant affidavit, probable cause affidavit, and all other related information involving a named individual and a specified event. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note the submitted information includes a copy of a crash report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for release of an accident report 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.* In this instance, the requestor has provided the department with two of the three specified items of information. Therefore, the department must release the submitted crash report pursuant to section 550.065(c)(4) of the Transportation Code.

You claim the submitted photographs are excepted from disclosure under section 11 of article 49.25 of the Code of Criminal Procedure, which is also encompassed by section 552.101 of the Government Code and provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate The records are subject to required public disclosure in accordance with [the Act], except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with [the Act], but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Crim. Proc. Code art. 49.25, § 11. Upon review, we conclude the submitted photographs are not photographs of a body taken during an autopsy. These photographs are not confidential under article 49.25, and the department may not withhold them under section 552.101 on such basis.

We note the submitted information contains alien registration numbers. Section 552.101 of the Government Code encompasses section 1304(b) of title 8 of the United States Code, which addresses the confidentiality of records of the registration of aliens under section 1301 of the United States Code. Section 1304(b) provides:

(b) Confidential Nature

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

- (1) pursuant to section 1357(f)(2) of this title, and
- (2) to such persons or agencies as may be designated by the Attorney General.

8 U.S.C. § 1304(b). We have marked the alien registration numbers that are generally confidential under section 1304(b) of title 8 of the United States Code.¹

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.101 of the Government Code also encompasses section 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone number and address of a 9-1-1 caller that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You state the department is part of an emergency communication district established under chapter 772.318. You also state that the telephone number and address you have marked were furnished to the department by a 9-1-1 service supplier. Based on this representation and our review, we agree the telephone number and address you have marked are generally confidential under section 772.318 of the Health and Safety Code.

You contend the remaining information contains confidential criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (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 Department of Public Safety (“DPS”) maintains, except that the 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. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the 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. Similarly, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note that because the laws governing the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interest, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F. *See* ORD 565 at 10-12. We have marked the CHRI in the remaining information to which chapter 411 of the Government Code applies.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license or driver’s license issued by an agency of this state or another state or country is excepted from public release. 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). We have marked the driver’s license and motor vehicle record information that is subject to section 552.130. Additionally, we note that the license plates visible in photographs 7848-7852, 7880-7883, 7887-7889, 7893-7896, and 7923 on the submitted CD labeled Corpus Christi Police Department Photo CD are also subject to section 552.130. The information we have marked includes the

license plate numbers of vehicles belonging to a deceased individual. The purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, to the extent a living person has an ownership interest in the vehicles at issue, then this information is generally confidential under section 552.130. Conversely, if no living person owns an interest in the vehicles at issue, then this information is not confidential under section 552.130, and the department may not withhold it on that basis.

In this instance, the requestor is a representative of the Texas Department of State Health Services (“DSHS”). The requestor has informed the department that DSHS seeks the information as part of an investigation conducted pursuant to chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by DSHS. *See* Health & Safety Code § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by DSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [DSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification . . . is considered to have given consent to a representative of [DSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the [Texas Board of Health].

Id. § 773.0612. The requestor states the information at issue pertains to allegations against a certified emergency medical technician. Because the requested information is directly related to emergency medical services personnel and the requestor is conducting an investigation under chapter 773, we conclude section 773.0612(a) of the Health and Safety Code is applicable to the requested information.

Accordingly, as you acknowledge, there is a conflict between the requestor’s right of access under section 773.0612 of the Health and Safety Code and the information that is made confidential by section 1304(b) of title 8 of the United States Code, section 772.318 of the Health and Safety Code, and sections 411.083 and 552.130 of the Government Code. As federal law, section 1304(b) of title 8 of the United States Code preempts any conflicting state provisions, including section 773.0612 of the Health and Safety Code. *See Equal Employment Opportunity Comm’n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Thus, we find that, notwithstanding the applicability of section 773.0612, the alien registration numbers we have

marked are confidential under section 1304(b) of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code on that basis.

With respect to the remaining conflicts, 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* Gov't Code § 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.). In this instance, although section 773.0612 generally allows DSHS access to information relating to emergency medical services personnel they are investigating, section 772.318 of the Health and Safety Code specifically protects the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier, and section 411.083 specifically makes CHRI generated by TCIC or NCIC confidential. We therefore conclude that the confidentiality provided by section 772.318 of the Health and Safety Code and section 411.083 of the Government Code is more specific than the general right of access provided under section 773.0612. Further, section 552.130 specifically protects driver's license and motor vehicle record information, and contains its own access provisions governing release of information. As such, it is not a general exception under the Act. Thus, we find the confidentiality provided by section 552.130 is also more specific than the general right of access provided by section 773.0612 of the Health and Safety Code. Accordingly, the department must withhold the information you have marked pursuant to section 772.318 of the Health and Safety Code, and the information we have marked pursuant to section 411.083 of the Government Code under section 552.101 of the Government Code. The department must also withhold the driver's license information we have marked under section 552.130 of the Government Code, and to the extent a living person has an ownership interest in the vehicles at issue, the department must withhold the motor vehicle record information we have marked and indicated under section 552.130.²

In summary, (1) the department must withhold the alien registration numbers we have marked under section 552.101 of the Government Code in conjunction with section 1304(b) of title 8 of the United States Code; (2) the department must withhold the telephone number and address you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; (3) the department must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083³; and (4) the department must withhold the driver's license information we have marked under section 552.130 of the Government Code; to the extent a living person has an ownership

²We note this 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 Texas driver's license number, a copy of a Texas driver's license, and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note section 411.110 of the Government Code provides that DSHS is entitled to obtain CHRI from the DPS that relates to a holder of a license or certificate under chapter 773 of the Health and Safety Code. Gov't Code § 411.110(a)(1)(c).

interest in the motor vehicle record information we have marked and indicated, the department must withhold this information under section 552.130. The remaining information must be released.⁴

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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 429145

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released contains information that is confidential with respect to the general public. If the department receives another request for this information from someone other than the requestor, the department should seek another ruling from this office at that time.