



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2011

Ms. Laura Garza Jimenez  
County Attorney  
Nueces County  
901 Leopard, Room 207  
Corpus Christi, Texas 78401

OR2011-16435

Dear Ms. Jimenez:

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# 435586.

The Nueces County Sheriff's Office (the "sheriff") received a request for all information pertaining to a specified arrest. You state some of the requested information will be released to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 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. This section encompasses information protected by chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). 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. *See* 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.* at 10-12.

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. *See 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.* Furthermore, any CHRI obtained from 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 section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id. § 411.081(b)* (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find some of the submitted information, which we have marked, constitutes CHRI and must generally be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, none of the remaining information consists of CHRI, and no portion of the remaining information may withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id. §§ 560.001* (defining “biometric identifier” to include fingerprints), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). Accordingly, the fingerprint information the sheriff has marked is generally confidential under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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). The driver’s license number the sheriff has marked, in addition to the information we have marked, is generally confidential under section 552.130 of the Government Code.

In this instance, the requestor is a representative of the Texas Department of State Health Services (“DSHS”). The requestor has informed the sheriff 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, 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 sections 411.083, 560.003, and 552.130 of the Government 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* 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 411.083 specifically makes CHRI generated by TCIC or NCIC confidential and section 560.003 of the Government Code specifically protects fingerprints. We therefore conclude that the confidentiality provided by sections 411.083 and 560.003 of the Government Code are 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 sheriff must withhold the information we have marked pursuant to section 411.083 of the Government Code and the information you have marked pursuant to section 560.003 of the Government Code under section 552.101 of the Government Code. The sheriff must also withhold the marked information under section 552.130 of the Government Code.

You also assert that some of the remaining information is excepted under section 552.147 of the Government Code. This office has found that specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986). Therefore, the requestor's statutory right of access under section 773.0612 prevails over the general exceptions to disclosure found in section 552.147 of the Government Code. Accordingly, the sheriff may not withhold any information under section 552.147.

In summary, the sheriff must withhold under section 552.101 of the Government Code the information we have marked pursuant to section 411.083 of the Government Code<sup>1</sup> and the information you have marked pursuant to section 560.003 of the Government Code. The sheriff must also withhold the marked information under section 552.130 of the Government Code. The remaining information must be released.<sup>2</sup>

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>We 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).

<sup>2</sup>We note the information being released contains information that is confidential with respect to the general public. If the sheriff receives another request for this information from someone other than the requestor, the sheriff should seek another ruling from this office at that time.

Ref: ID# 435586

Enc. Submitted documents

c: Requestor  
(w/o enclosures)