



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2012

Ms. Kristin Kidd
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2012-02490

Dear Ms. Kidd:

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# 445752.

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for sixteen categories of information pertaining to a specified incident involving the requestor's client. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted documents include a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces 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. *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

¹Although you raise sections 552.107 and 552.111 of the Government Code, you make no arguments to support these exceptions. Accordingly, we understand the district attorney's office no longer asserts these exceptions. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

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 district attorney's office with the requisite pieces of information. You seek to withhold portions of the submitted information under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). We note a statutory right of access generally prevails over the Act's exceptions to public disclosure. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information 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 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. In this instance, section 550.065 specifically provides access only to accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access to accident reports provided under section 550.065 is more specific than the general confidentiality provided under section 552.130. Accordingly, the district attorney's office may not withhold any portion of the CR-3 accident report form under section 552.130 and must release the CR-3 accident report form, which we have marked, in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

Section 552.108 of the Government Code provides in relevant part:

(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:

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

...

(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.

Gov't Code § 552.108(a)(1), (a)(4), (b). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You do not state the responsive information pertains to an ongoing criminal investigation or prosecution, nor do you explain how its release would interfere with the detection, investigation, or prosecution of crime. Moreover, you inform us the submitted information pertains to a concluded case in which the defendant pleaded guilty and was sentenced to three days in jail. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the responsive information, and no portion of this 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 state that “[m]aking police reports, crime scene photos public would interfere with the future detection, investigation or prosecution of a crime, in that witnesses would be less likely to report a crime if they could end up on a video that is open to the public.” Although you make this general assertion, we find you have failed to meet your burden to establish that public access to the information at issue would interfere with law enforcement. Accordingly, you may not withhold any of the responsive information under section 552.108(b)(1).

A governmental body claiming 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 noted above, you state the case at issue has been disposed of by a guilty plea resulting in a three-day jail sentence. Accordingly, the investigation and prosecution of this matter resulted in a conviction. Therefore, we find you have failed to demonstrate the applicability of section 552.108(b)(2) to the submitted information. Accordingly, you may not withhold any of the responsive information under section 552.108(b)(2) of the Government Code.

You also contend the information at issue reflects the mental impressions or legal reasoning of an attorney representing the State of Texas. *See* Gov’t Code § 552.108(a)(4), (b)(3). Upon review, we agree the submitted case report form was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation. Therefore, the district attorney’s office may withhold this information, which we have marked, under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. However, the remaining information at issue consists of Frisco Police Department records pertaining to the incident at issue. We find you have failed to demonstrate how this information either was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, as you have not established the remaining information falls within the scope of any subsection of section 552.108, we conclude the district attorney’s office may not withhold any of the remaining information under section 552.108 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.” Gov’t Code

§ 552.101. Section 552.101 encompasses information that other statutes make confidential, such as laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except 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). Thus, 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. However, 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 the information we have marked consists of CHRI that must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. However, the remaining information does not consist of CHRI and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked, as well as the information we have indicated in the submitted video recordings, is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the district attorney’s office must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Our office also has determined that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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 criminal history). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In this instance, the submitted information contains references to a prior driving while intoxicated ("DWI") conviction of the named individual. In the context of the current charge of DWI, information relating to the prior convictions for the same offense is a matter of legitimate public interest and may not be withheld on privacy grounds under section 552.101.

As previously noted, section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state, or another state or country. Gov't Code § 552.130(a)(1)-(2). However, we note this exception protects personal privacy. In this instance, the requestor is the authorized representative of one of the individuals listed in the submitted information. Therefore, the requestor has a right of access under section 552.023 of the Government Code to his client's motor vehicle record information, and the district attorney's office may not withhold that information under section 552.130 of the Government Code. *See generally id.* § 552.023; Open Records Decision No. 481 at 4 (1987). However, the district attorney's office must withhold the remaining information we have marked, as well as portions of the submitted video recordings depicting discernable license plate numbers, under section 552.130 of the Government Code.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). The requestor has a right of access to his client's social security number. *See generally id.* § 552.023; ORD 481 at 4. Accordingly, the district attorney's office may not withhold that individual's social security number from the requestor under section 552.147. However, the district attorney's office may withhold the remaining social security number, which we have marked, under section 552.147.²

In summary, the district attorney's office must release the submitted CR-3 accident report form, which we have marked, in its entirety pursuant to chapter 550 of the Transportation Code. The district attorney's office must withhold the information we have marked under chapter 411 of the Government Code and federal law. The district attorney's office may withhold the information we have marked under subsections 552.108(a)(4) and (b)(3) of the

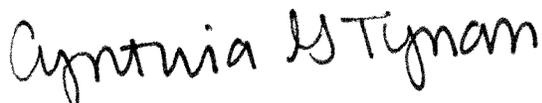
²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Government Code. The district attorney's office must withhold the information we have marked in the submitted documents, as well as the information we have indicated in the submitted video recordings, under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold the information we have marked, as well as the portions of the submitted video recordings depicting discernable license plate numbers, under section 552.130 of the Government Code. The department may withhold the social security number we have marked under section 552.147 of the Government Code. The remaining information must be released.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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 445752

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note some of the information being released contains information to which the requestor has a special right of access. See Gov't Code § 552.023(a). Because the requestor has a right of access to this information that would be confidential with respect to the general public, if the district attorney's office receives another request for this information from a different requestor, the district attorney's office must again seek a ruling from this office.