



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2012

Ms. Janet I. Monteros  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2012-16594

Dear Ms. Monteros:

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# 468075 (CA Opinion 12-334).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You state the sheriff's office has released some of the requested information. You claim 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.

Initially, we note you seek to withhold the telephone numbers you have marked, two of which belong to 9-1-1 callers. In Open Records Letter No. 2011-16449 (2011), this office issued a previous determination to the sheriff's office authorizing it to withhold the originating telephone number of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Provided the telephone numbers of the 9-1-1 callers we have marked were furnished by a service supplier established in accordance with chapter 772, the sheriff's office must withhold these telephone numbers in accordance with the previous determination issued in Open Records Letter No. 2011-16449. However, the remaining numbers you have marked were provided by a witness, not a service supplier

established in accordance with chapter 772. Accordingly, these telephone numbers are not subject to Open Records Letter No. 2011-16449 and may not be withheld on that ground.

Next, we note the submitted information contains a portion of a CR-3 accident report subject to section 550.065 of the Transportation Code. This section encompasses information made confidential by other statutes, such as section 550.065 of the Transportation Code. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or subsection (e), accident reports are privileged and for the confidential use of certain specified entities. Transp. Code § 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, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor provided the sheriff's office with two of the requisite pieces of information specified by the statute. Although you seek to withhold a portion of the CR-3 accident report under section 552.147 of the Government Code, we note information that is specifically made public by statute may not be withheld from the public pursuant to the general exceptions under the Act. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976).

You also assert portions of the CR-3 crash report are confidential under section 552.130 of the Government Code. Section 552.130 excepts from disclosure 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. *See* Gov't Code § 552.130(a)(1)-(2). As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 544, 378, 161, 146. 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(c)(4) of the Transportation Code and the confidentiality provided under section 552.130 of the Government Code. 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).

In this instance, section 550.065(c)(4) 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(c)(4) is more specific than the general confidentiality provided under section 552.130. Accordingly, the sheriff's office may not withhold any portion of the accident report under section 552.130. Therefore, the sheriff's office must

release the submitted portion of the CR-3 accident report to this requestor pursuant to section 550.065(c)(4) of the Transportation 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. This section encompasses 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. 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 the 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). 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. Similarly, 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find none of the remaining information consists of CHRI for the purposes of chapter 411 of the Government Code. Thus, the sheriff’s office may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 11 of article 49.25 of the Code of Criminal Procedure, which 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 Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, 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 find the photographs of the deceased individual we have indicated were taken during an autopsy. We further find neither of the statutory exceptions to confidentiality is applicable in this instance. Accordingly, the sheriff's office must withhold the photographs we have indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. However, none of the remaining photographs are subject to section 11 of article 49.25 and may not be withheld under section 552.101 on that basis.

Section 552.101 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. *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 found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). This office has found that 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 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You seek to withhold portions of the remaining information under section 552.130 of the Government Code. As noted above, section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, none of the remaining information at issue consists of motor vehicle record information subject to section 552.130 and none of it may be withheld on that basis.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, 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." *Id.* § 552.136. This office has determined insurance policy numbers are "access device" numbers for purposes of section 552.136. Accordingly, we find the sheriff's office must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the sheriff’s office may not withhold the deceased individual’s social security number under section 552.147. However, the sheriff’s office may withhold the social security number we have marked under section 552.147 of the Government Code.

In summary, provided the originating telephone numbers of the 9-1-1 callers at issue were furnished by a service supplier established in accordance with chapter 772, the sheriff’s office must withhold the telephone numbers we have marked in accordance with the previous determination issued in Open Records Letter No. 2011-16449. The sheriff’s office must release the submitted portion of CR-3 accident report to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. The sheriff’s office must withhold the photographs we have indicated under section 552.101 of the Government Code in conjunction with section 11 of article 49.25 of the Code of Criminal Procedure. The sheriff’s office must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The sheriff’s office may withhold the social security number we have marked under section 552.147 of the Government Code. The remaining information must be released.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

**Ref: ID# 468075**

**Enc. Submitted documents**

**c: Requestor  
(w/o enclosures)**