



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2013

Ms. Donna L. Johnson
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OR2013-13888

Dear Ms. Johnson:

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# 496763 (Ref: COM 13-009 and COM 13-012).

The Manvel Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a specified incident and report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-07190 (2013). In that ruling, we determined the following: (1) the department must release the CR-3 accident report form we have marked in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code; (2) with the exception of the citation and basic information, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code; (3) department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) to the extent the information we have marked pertains to a living individual who is not the requestor's client, the department must withhold the information we have marked under section 552.130 and section 552.136 of the Government Code, and (5) the remaining information must be released. However, while the requestor in Open Records Letter No. 2013-07190 had a right of access to some of the information that

is now at issue, these requests involve two different requestors who do not have the same right of access to the information at issue. Thus, the circumstances have changed, and the department may not continue to rely on Open Records Letter No. 2013-07190 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your argument against disclosure of the information at issue.

You seek to withhold all of the submitted information at issue under section 552.108 of the Government Code. We note, however, some of the information at issue was previously released in accordance with Open Records Letter No. 2013-07190, as discussed above. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, to the extent any portion of the information at issue was previously released in accordance with Open Records Letter No. 2013-07190, the department may not now withhold such information under section 552.108. To the extent the information at issue was not previously released in accordance with the prior ruling, we will consider your arguments under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code.

Next, we note the submitted information includes a CR-3 accident report, which we have marked, 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, 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 release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) 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 provides the agency with two or more pieces of information specified by the statute. In this

instance, both the first and second requestor have provided the department with the requisite pieces of information pursuant to section 550.065(c)(4). Although you seek to withhold this information under section 552.101 in conjunction with common-law privacy and section 552.108 of the Government Code, as a general rule, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 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 exceptions to disclosure under the Act). Further, when a statute directly conflicts with a common-law principle or claim, the statutory provision controls and preempts common-law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common-law only when the statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law).

You also assert portions of the CR-3 accident 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 county. *See* Gov't Code § 552.130(a)(1)-(2). As previously noted a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451. 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 in this request, 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 department may not withhold any portion of the marked CR-3 accident report under section 552.130. Thus, the department must release the marked CR-3 accident report form in its entirety to both requestors pursuant to section 550.065(c)(4).

Next, we address your argument under section 552.108 of the Government Code for the remaining information. Section 552.108(a)(1) of the Government Code excepts from

disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the 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 state the remaining information relates to a pending criminal investigation. We note, however, the information at issue includes a citation. Because a copy of the citation was provided to the individual who was cited, we find the release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). Accordingly, the citation may not be withheld under section 552.108 of the Government Code. Upon review, we conclude, with the exception of the citation, section 552.108(a)(1) is applicable to the remaining information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177 at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of the citation, basic information, and any information that was previously released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

We now address your arguments for the remaining information that was previously released in accordance with Open Records Letter No. 2013-07190. 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 protected by other statutes, including the Driver’s Privacy Protection Act of 1994 (the “DPPA”), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

(b) Permissible uses.—Personal information referred to in subsection (a) . . . subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions[.]

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)) . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)-(c). Section 2721(a) is applicable to state departments of motor vehicles. *See id.* § 2721(a). Pursuant to section 2721(b), personal information may be disclosed to certain entities by a state department of motor vehicles. *See id.* § 2721(b). You state the remaining information contains information protected under the DPPA. However, we find the department is not a state department of motor vehicles. Further, you do not state the department received the information at issue from a state department of motor vehicles. Therefore, you have failed to demonstrate any of the remaining information is subject to section 2721(a) of the DPPA. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the department compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the department.

Pursuant to section 730.007, personal information may be disclosed to an authorized recipient under certain circumstances, including a governmental agency collecting information to carry out its functions. *See id.* § 730.007(a)(2)(A)(I). Section 730.013 of the Transportation Code provides for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

Id. § 730.013(a), (b). You do not represent the department received the information at issue from an agency that compiles or maintains motor vehicle records for purposes of section 730.013. Accordingly, the department may not withhold any part of the remaining information under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

You also seek to withhold some of the remaining information under section 552.101 in conjunction with section 724.018 of the Transportation Code. Section 724.018 provides “[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney.” Transp. Code § 724.018. Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual. *See* Open Records Decision Nos. 623 (1994), 613 (1993). You contend that because the requestor is neither the person whose blood specimen was analyzed nor that person's authorized representative, the information you have marked should not be released. Thus, you appear to argue that release of the marked information would be a violation of section 724.018.

In Open Records Decision No. 478, this office interpreted the predecessor statute, section 3(e) of article 6701 1-5 of Vernon's Texas Civil Statutes, as creating a special right of access for the person supplying the specimen; however, we concluded that the statute did not constitute a grant of confidentiality with regard to other persons. ORD 478 at 2-3; *see also* Open Records Decision Nos. 658 (1998) (statutory confidentiality provision must be express), 465 (1987) (confidentiality requirement not to be implied from statutory structure). Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 724.018 of the Transportation Code.

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. In addition, this office has 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).

However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining solely to a deceased individual may not be withheld on common-law privacy grounds. 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.); *Justice v. Belo Broadcasting Corp.*, All F. Supp. 145 (N.D. Tex. 1979); see also Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information you seek to withhold is not highly intimate or embarrassing, is of legitimate public interest, or pertains to an individual who is deceased. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

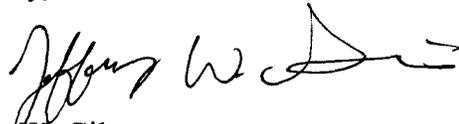
Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the information we have marked in the citation and remaining information under section 552.130 of the Government Code.

In summary, the department must release the submitted CR-3 accident report to both requestors in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of the citation, basic information, and any information that was previously released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked in the citation and remaining information under section 552.130 of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 496763

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)