



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2014

Ms. Delietrice Henry
Open Records Assistant
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-02228

Dear Ms. Henry:

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# 513115 (ORR No. PARD110513).

The Plano Police Department (the "department") received a request for a specified incident report. You state the department released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a) 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). 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 information at issue relates to an ongoing investigation by the department and pending prosecution of the case by the Collin County District Attorney's Office, which objects to the release of the information at issue. Based on this representation, we find release of the information would interfere with the detection, investigation, or prosecution of crime. *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). Thus, we find section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1).

We note the requestor is a representative of the Texas Department of State Health Services (the “DSHS”). Section 773.0612 of the Health and Safety Code provides the DSHS or its representative “is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code].” Health & Safety Code § 773.0612(a). Thus, the requestor may have a statutory right of access to information that is otherwise protected by section 552.108. See 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).

As we are not able to determine if the requestor has a statutory right of access, we rule conditionally. If the individual at issue is not an emergency medical technician licensed under chapter 773 of the Health and Safety Code, or the DSHS does not seek the requested information as part of an investigation the DSHS is conducting pursuant to chapter 773 of the Health and Safety Code, then the requestor does not have a special right of access to the information at issue. In that event, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In the event the individual whose information is at issue is an emergency medical technician licensed under chapter 773 of the Health and Safety Code, and the DSHS seeks the requested information as part of an investigation the DSHS is conducting pursuant to chapter 773 of the Health and Safety Code, then the requestor is authorized to obtain records and other documents that are directly related to emergency medical services personnel to the extent necessary to enforce chapter 773 of the Health and Safety Code and the rules adopted under chapter 773 of the Health and Safety Code. See Health & Safety Code § 773.0612(a). Thus, if these conditions are met, section 773.0612 of the Health and Safety Code applies to the submitted information.

In that instance, we note portions of the information at issue are subject to sections 560.003 and 552.130 of the Government Code. Section 552.101 of the Government Code excepts

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprints we have marked are subject to 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 or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we find the motor vehicle record information we have marked is subject to section 552.130 of the Government Code.

If section 773.0612 of the Health and Safety Code applies to the information at issue, 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 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 id.* § 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 the DSHS access to information relating to emergency medical services personnel it is investigating, section 560.003 of the Government Code specifically protects fingerprints. We therefore conclude that the confidentiality provided by section 560.003 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. 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, in the event the requestor has a statutory right of access under section 773.0612, the department must withhold the information we have marked pursuant to section 560.003 of the Government Code under section 552.101 of the Government Code and the information we have marked under section 552.130 of the Government Code.¹

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

In summary, if the individual whose information is at issue is an not emergency medical technician licensed under chapter 773 of the Health and Safety Code, or the DSHS does not seek the requested information as part of an investigation the DSHS is conducting pursuant to chapter 773 of the Health and Safety Code, then, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, if each of these conditions are met, then the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and the information we have marked under section 552.130 of the Government Code, and the remaining information must be released to this requestor.

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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/dls

Ref: ID# 513115

Enc. Submitted documents

c: Requestor
(w/o enclosures)