



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 8, 2014

Mr. Daniel Ortiz  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2014-18052

Dear Mr. Ortiz:

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# 539001 (El Paso Ref. Nos. 14-1026-4531 and 14-1026-4615).

The El Paso Police Department (the "department") received two requests from separate requestors for information concerning a specified case. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b) of the Government Code, a governmental body that seeks to withhold information from public disclosure under one of the Act's exceptions must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request for information. *See* Gov't Code § 552.301(b). Additionally, under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons why the stated

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<sup>1</sup>Although you raise section 552.101 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

The department received the first request for information on July 17, 2014. You state the department is closed for regular business every Friday. Thus, the department was required to request a decision from this office and state all of the applicable exceptions to disclosure for the information at issue by August 5, 2014. Additionally, it was required to submit the information described by section 552.301(e) by August 13, 2014. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). The department did not raise section 552.103 of the Government Code as an applicable exception for this information until August 20, 2014. Therefore, it failed to comply with the requirements of section 552.301(b) in raising section 552.103 as an exception. Additionally, the department submitted additional information that was responsive to the first request on August 20, 2014. Therefore, it failed to comply with the requirements of section 552.301(e) in seeking to withhold this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 does not make information confidential. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the department may not withhold any of the submitted information under section 552.103 of the Government Code. Similarly, section 552.108 of the Government Code does not make information confidential. *See Gov't Code* § 552.007; Open Records Decision Nos. 665 at 2 n.5, 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Accordingly, in failing to comply with section 552.301(e) for the additional information submitted on August 20, the department may not withhold that information on the basis of its own interests under section 552.108 of the Government

Code. Nonetheless, the need of a governmental body, other than the one seeking an open records decision, to withhold information under section 552.108 can provide a compelling reason to withhold information from disclosure. Open Records Decision No. 586 at 2–3 (1991). You have submitted a letter from the 34th Judicial District Attorney’s Office (the “district attorney’s office”) asserting its own interests under section 552.108. Accordingly, we will consider whether the department may withhold the information under section 552.108 on behalf of the district attorney’s office.

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 . . . 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). As previously mentioned, you have provided a representation from the district attorney’s office stating the submitted information relates to a pending prosecution and release of this information would interfere with the detection, investigation, and prosecution of a 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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to all of the submitted information.

However, section 552.108 does not except from disclosure basic information about a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, a sufficient portion of the narrative to include a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may generally withhold the submitted information on behalf of the district attorney’s office under section 552.108(a)(1) of the Government Code.

We note, however, the first requestor identifies herself as a senior investigator for the Texas Medical Board (the “board”). Section 153.006 of the Occupations Code provides in part that “[t]he board may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant.” Occ. Code § 153.006(a). In this instance, the information to which the board seeks access pertains to a physician. Thus, the board’s statutory right of access to a licensed physician’s criminal records under section 153.006 prevails over the general exceptions to disclosure under the Act, such as section 552.108 of the Government Code. *See* Open Records Decision No. 451 at 4 (1986). We therefore conclude

the first requestor generally has a right of access to the submitted information under section 153.006 of the Occupations Code. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information).

A portion of the information to which the first requestor has a right of access is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 of the Government Code excepts from disclosure information relating 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). Accordingly, the driver's license, license plate, and vehicle registration information contained in the submitted records is confidential under section 552.130 of the Government Code.

Thus, there is a conflict between the confidentiality provided by section 552.130 and the right of access provided to the first requestor under section 153.006. As previously noted, a statutory right of access 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. *See* Gov't Code § 552.130(b) (information described by section 552.130(a) may only be released in manner authorized by chapter 730 of Transportation Code). Where general and specific statutes 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 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.). Section 153.006 generally provides the board access to criminal record reports regarding a license holder or license applicant. *See* Occ. Code § 153.006(a). However, section 552.130 specifically protects motor vehicle record information. *See* Gov't Code § 552.130. Furthermore, although section 153.006 was enacted later than section 552.130, there is no evidence the legislature intended section 153.006 to prevail over section 552.130. *See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7, 31. We therefore conclude, notwithstanding section 153.006, the department must withhold from the first requestor the driver's license, license plate, and registration information in the submitted records under section 552.130 of the Government Code.

In summary, with the exception of basic information, the department may withhold the submitted information from the second requestor under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The department must release the submitted information to the first requestor pursuant to section 153.006 of the Occupations Code, but in doing so must

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the driver's license, license plate, and registration information in the submitted records under section 552.130 of the Government Code.

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](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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, with a large initial "N" and "F".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/bhf

Ref: ID# 539001

Enc. Submitted documents

c: Requestor  
(w/o enclosures)