



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 25, 2009

Ms. Meredith R. Wilganowski  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2009-11955

Dear Ms. Wilganowski:

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# 353443.

The Bryan Police Department (the "department") received a request for information pertaining to a specified arrest. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.108(a) 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). 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 at issue. *See id.*

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

§ 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state, and provide documentation showing, that the submitted information relates to a pending criminal prosecution being conducted by the Brazos County District Attorney's Office. Based on your representation and our review of the submitted documents, we conclude release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Therefore, we agree that section 552.108(a)(1) is applicable to the submitted information.<sup>2</sup> *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident).

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the department may generally withhold the submitted information under section 552.108(a)(1).

We note that the 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 sections 552.103 and 552.108 of the Government Code. *See* Open Records Decision No. 451 at 4 (1986). We therefore conclude that the board 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).

However, we note a portion of the submitted information is subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 of the Government Code excepts from disclosure

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<sup>2</sup>As we are able to make this determination under section 552.108, we need not address your argument under section 552.103 of the Government Code, except to note that section 552.103 generally does not except from disclosure the same basic information that is subject to section 552.108(c). *See* Open Records Decision No. 597 (1991).

<sup>3</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).

information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). We find that the Texas driver's license numbers, which we have marked, must generally be withheld under section 552.130.

Section 153.006 does not specifically grant the board access to information that is encompassed by section 552.130 of the Government Code. Section 552.130 has its own access provisions that govern the release of the types of information that section 552.130 encompasses. *See id.* § 552.130(b) (information described by section 552.130(a) may be released only if, and in the manner authorized by Transp. Code ch. 730). If a statute specifically authorizes release of information under certain circumstances or to particular entities, then such information may only be released or transferred in accordance with that statute. *See* Attorney General Opinions GA-0055 (2003) at 3-4 (SBEC not entitled to access teacher appraisals made confidential by section 21.355 of the Education Code where section 21.352 of the Education Code expressly authorizes limited release of appraisals), DM-353 at 4-5 n.6 (1995) (detailed provisions in state law for disclosure of records would not permit disclosure "to other governmental entities and officials . . . without violating the record's confidentiality"), JM-590 at 5 (1986) ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others"); Open Records Decision No. 655 (1997) (because statute permitted Department of Public Safety to transfer confidential criminal history information only to certain entities for certain purposes, county could not obtain information from the department regarding applicants for county employment).

Moreover, 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 that the legislature intended the general provision to prevail. *See* Gov't Code § 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, section 153.006 of the Occupations Code generally allows the board access to "criminal record reports . . . regarding a license holder or license applicant," Occ. Code § 153.006(a), but section 552.130 of the Government Code specifically protects Texas driver's license and motor vehicle record information. Gov't Code § 552.130(a)(1)-(2). We therefore conclude that, notwithstanding section 153.006, the department must withhold the Texas driver's license numbers we have marked under section 552.130. *See also* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or

conducted by Texas Alcoholic Beverage Commission). The department must release the rest of the submitted information pursuant to section 153.006 of the Occupations Code.<sup>4</sup>

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 at (512) 475-2497.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 353443

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>4</sup>Should the department receive another request for this same information from a person who would not have a right of access to the information, the department should re-submit this information and request another decision. See Gov't Code §§ 552.301(a), .302.