



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2009-17984

Dear Ms. Rangel:

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# 364715.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all information regarding a named individual, including information regarding a specified arrest. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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

¹We 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.

Code § 552.101. Section 552.101 encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note the submitted information was used or developed in an investigation of alleged aggravated sexual assault of a child. *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault or aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find that the information is generally confidential under section 261.201 of the Family Code. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We note that section 773.0612 of the Health and Safety Code constitutes “applicable state law” in this instance.

The requestor in this instance is a representative of the Texas Department of State Health Services (“DSHS”). The requestor has informed the sheriff that DSHS seeks the information pursuant to an investigation conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by DSHS. *See Health & Safety Code* § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by DSHS under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [DSHS] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification . . . is considered to have given consent to a representative of [DSHS] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the [Texas Board of Health].

Id. § 773.0612. The individual at issue is a certified emergency medical technician. Thus, we find that the submitted documents are directly related to emergency medical services personnel for purposes of section 773.0612(a). DSHS states, and provides information reflecting, that DSHS intends to use the requested information for purposes consistent with chapter 773 of the Health and Safety Code. Therefore, we determine that the requestor has a statutory right of access to the information under section 773.0612(a) of the Health and Safety Code. Consequently, if the sheriff determines that DSHS intends to use the information for purposes consistent with the Family Code, the sheriff must generally release the submitted information to the requestor. We note that information obtained by DSHS pursuant to section 773.0612(a) is confidential in the hands of DSHS. *See id.* § 773.0612(b).

If, however, the sheriff determines that DSHS does not seek this information for purposes consistent with the Family Code, the sheriff must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996), 440 at 2 (1986) (predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

In the event the sheriff determines that release of the information is consistent with the Family Code, we must nevertheless consider whether the submitted information is otherwise excepted from disclosure. You assert that the submitted information contains fingerprints. Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). We find there is a conflict between section 560.003 of the Government Code and the right of access afforded to DSHS under section 773.0612 of the Health and Safety 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.). Section 773.0612 gives a general right of access to all information related to EMS personnel being investigated by the DSHS. In contrast,

section 560.003 specifically makes fingerprints confidential and contains its own release provisions. *See* Gov't Code § 560.002 (providing for access to fingerprints in certain instances). Therefore, we find that the confidentiality provision of section 560.003 is more specific than the access provision of section 773.0612. Furthermore, section 560.003 was enacted after section 773.0612.² Accordingly, we find section 560.003 prevails over section 773.0612, and the sheriff must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003.

The submitted information also contains criminal history record information. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* 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 the 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. Furthermore, any CHRI obtained from the 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. We note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information).

A portion of the remaining information constitutes CHRI generated by TCIC and NCIC. We find this situation presents a conflict between section 411.083 of the Government Code and section 773.0612 of the Health and Safety Code. While section 773.0612 generally allows DSHS access to information relating to EMS personnel they are investigating, section 411.083 of the Government Code specifically makes CHRI generated by TCIC or NCIC confidential. Furthermore, section 411.083 was enacted after section 773.0612.³ Because the specific confidentiality provision of section 411.083 prevails over the DSHS's general right of access, the sheriff must withhold this information, which we have marked, pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

²Act of May 24, 2001, 77th Leg., R.S., ch. 634, § 2, 2001 Tex. Gen. Laws 1195, 1196 (codified as section 560.003 of the Government Code); Act of March 25, 1991, 72nd Leg., R.S., ch. 14, § 264, 1991 Tex. Gen. Laws 42, 206 (codified as section 773.0612 of the Health and Safety Code).

³Act of May 31, 1993, 73rd Leg., R.S., ch. 790, § 35, 1993 Tex. Gen. Laws 3088, 3107 (Vernon) (codified as section 411.083 of the Government Code).

You assert that some of the remaining information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy, as well as sections 552.108, 552.136, and 552.147 of the Government Code. This office has found that specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 613 at 4 (1993), 451 at 4 (1986). Therefore, the requestor's statutory right of access under section 773.0612 prevails over the general exceptions to disclosure found in section 552.101 of the Government Code in conjunction with common-law privacy, as well as sections 552.108, 552.136, and 552.147 of the Government Code. Accordingly, the sheriff may not withhold any information under common-law privacy, section 552.108, section 552.136, or section 552.147.

Finally, you claim that the Texas driver's license and motor vehicle information in the submitted information is excepted from disclosure under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Unlike sections 552.108, 552.136, and 552.147 and common-law privacy, section 552.130 contains its own release provisions. *Id.* § 552.130(b). Thus, section 552.130 is not a general provision under the Act. *See* Attorney General Opinions GA-0055 (2003) at 3-4 (where statute specifically authorizes release of information under certain circumstances or to particular entities, that information may only be released or transferred in accordance therewith), DM-353 (1995) at 4-5 n.6 (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 (1986) at 5 ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others"). Additionally, section 552.130 was passed in a later legislative session than section 773.0612.⁴ Therefore, because section 552.130 is the more specific statute and was enacted later in time, the sheriff must withhold the information we have marked under section 552.130 of the Government Code.⁵

In summary, if the sheriff determines that DSHS intends to use the information for purposes consistent with the Family Code, the sheriff must withhold (1) the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, (2) the CHRI we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code, and (3) the Texas motor vehicle record information we have marked under section 552.130 of the

⁴Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government Code).

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code. The remaining information, however, must be released to this requestor.⁶ If the sheriff determines that DSHS does not seek the submitted information for purposes consistent with the Family Code, the sheriff must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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.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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 364715

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁶We note that because the requestor has a special right of access to this information in this instance, the sheriff must again seek a decision from this office if it receives another request for the same information from another requestor.