



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2011

Mr. Tommy L. Coleman
Assistant District Attorney
Williamson County District Attorney's Office
405 South Martin Luther King #1
Georgetown, Texas 78626

OR2011-06193

Dear Mr. Coleman:

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# 416529.

The Williamson County District Attorney's Office (the "district attorney") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.132, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note documents 1221 through 1223 are not responsive to the instant request for information because they consist of the request for information and a document that was created after the date the request was received. We also note photographs P9020288 through P9020334 on the compact disc labeled 1544 and photographs R1-18 through R1-24 on the compact disc labeled 1545 are not responsive because they do not pertain to the specified incident. This ruling does not address the public availability of non-responsive information, and the district attorney is not required to release non-responsive information in response to this request.

Next, we note the submitted responsive information consists of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides a completed investigation is public information unless it is confidential by other law

or excepted from disclosure under section 552.108. Gov't Code § 552.022(a)(1). Section 552.111 is a discretionary exception and does not make information confidential; therefore, the district attorney may not withhold any of the submitted information under this exception. *See id.* § 552.007; Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). The attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that “[t]he Texas Rules of Civil Procedure . . . are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). We note, however, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the submitted responsive information relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the information at issue and the information may not be withheld on that basis. However, pursuant to section 552.022(a)(1), we will consider your claim under section 552.108 of the Government Code. Further, as sections 552.101, 552.130, 552.132, and 552.1325 of the Government Code constitute “other law” that makes information confidential for the purposes of section 552.022, we will also consider your arguments under those sections.

We next address your arguments under section 552.108 of the Government Code for the responsive information as it is the most encompassing exception you raise. We understand you to assert that the responsive information is excepted under section 552.108 as interpreted by *Holmes v. Morales*. *See Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In *Holmes*, the Texas Supreme Court held that the plain language of section 552.108 did not require a governmental body to show that release of the information would unduly interfere with law enforcement. *Id.* at 925. The *Holmes* case further held that “section 552.108’s plain language makes no distinction between a prosecutor’s ‘open’ and ‘closed’ criminal litigation files” and concluded that the Harris County District Attorney may withhold his closed criminal litigation files under that exception. *Id.* Subsequent to the interpretation of section 552.108 in *Holmes*, the Seventy-fifth Legislature amended section 552.108 extensively. *See* Act of June 1, 1997, 75th Leg., R.S., ch. 1231, § 1, 1997 Tex. Gen. Laws 4697. As amended, section 552.108 now expressly requires a governmental body to explain, among other things, how release of the information would interfere with law enforcement. Accordingly, the court’s ruling in *Holmes*, which construed former section 552.108, is superseded by the amended section, which now reads as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body claiming section 552.108 must reasonably explain how and why 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 have not stated that the responsive information pertains to an

ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. In fact, you specifically state that this information pertains to a concluded case that resulted in conviction. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) to the responsive information and no information may be withheld on that basis.

Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. See Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. See, e.g., Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. See Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

In this instance, you have provided no argument as to how section 552.108(b)(1) applies to the responsive information. Thus, we find you have failed to meet your burden to demonstrate how the release of the responsive information would interfere with law enforcement and crime prevention. Accordingly, the district attorney may not withhold any of the responsive information under section 552.108(b)(1).

A governmental body claiming subsection 552.108(a)(2) or subsection 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. You state that the prosecution of this matter concluded with the defendant pleading guilty and being sentenced to ten years of incarceration. Accordingly, the investigation and prosecution of this matter resulted in a conviction. Thus, we find you have failed to demonstrate the applicability of subsection 552.108(a)(2) or subsection 552.108(b)(2) to the responsive information. Section 552.108(a)(3) is also inapplicable, as the responsive information does not relate to a threat against a police officer. See Gov't Code § 552.108(a)(3).

You contend that documents 1224, 1361, 1370, 1460 through 1462, 1465, 1467 through 1472, 1476 through 1478, and 1480 through 1538 reflect the mental impressions or legal reasoning of the prosecutor representing the state. *See id.* § 552.108(a)(4), (b)(3). Upon review, we agree some of the documents at issue were either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflect the mental processes or legal reasoning of an attorney representing the state. Therefore, the district attorney may withhold documents 1224, 1361, 1370, 1460 through 1462, 1472, 1476 through 1477, the marked portion of 1478, 1480 through 1485, the marked portion of 1486, 1488 through 1492, 1495 through 1522, and 1524 through 1538 under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. However, we find you have not demonstrated how documents 1465, 1467 through 1471, portions of documents 1478 and 1486, 1487, 1493, 1494, and 1523 were either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflect the mental processes or legal reasoning of an attorney representing the state. Thus, we find you have not established that these documents are subject to section 552.108(a)(4) and 552.108(b)(3) and they may not be withheld on that basis.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). However, you cite no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district attorney to obtain or maintain a social security number. Consequently, you have failed to demonstrate the applicability of section 405 of title 42 of the United States Code to any social security numbers within the responsive documents, and no portion of the responsive information may be withheld under section 552.101 of the Government Code on that basis. We caution, however, that section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing a social security number, you should ensure it was not obtained or is not maintained by the district attorney pursuant to any provision of law enacted on or after October 1, 1990.¹

Section 552.101 of the Government Code also encompasses Title 28, part 20 of the Code of Federal Regulations, which governs the release of criminal history record information (“CHRI”) that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. 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 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. We note information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). Upon review, the information we have marked consists of CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.² However, the remaining information you have indicated does not consist of CHRI and may not be withheld under section 552.101 of the Government Code on that basis.

The district attorney also seeks to withhold CHRI under article 60.03 of the Code of Criminal Procedure, which provides in pertinent part:

(a) Criminal justice agencies . . . are entitled to access the data bases of the Department of Public Safety, The Texas Juvenile Probation Commission, the Texas Youth Commission, and the Texas Department of Criminal Justice in accordance with applicable state or federal law or regulations. The access granted by this subsection does not grant an agency . . . the right to add, delete, or alter data maintained by another agency.

...

(c) . . . a criminal justice agency . . . may [not] disclose to the public information in an individual’s criminal history record if the record is protected by state or federal law or regulation.

Crim. Proc. Code art. 60.03. The remaining information the district attorney seeks to withhold pursuant to article 60.03 does not constitute criminal history information and, therefore, the district attorney may not withhold it under section 552.101 on that basis.

We note the remaining information includes fingerprints. Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to

²As our ruling is dispositive for the information we marked, we need not address your remaining arguments against its disclosure.

include fingerprints and records of hand geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprints. Therefore, the district attorney must withhold the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find documents 1388 through 1391 constitute EMS records of the identity, evaluation, or treatment of a patient and are confidential under section 773.091. Therefore, the district attorney must withhold documents 1388 through 1391 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g).³

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which provides confidentiality for medical records. Section 159.002 of the MPA provides in part the following:

³As our ruling is dispositive, we need not address your remaining arguments against the disclosure of documents 1388 through 1391.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Upon review, we find that the information we have marked consists of medical records and information taken from medical records that may only be released in accordance with the MPA.⁴

Next, you claim the grand jury subpoenas in documents 1339 and 1455 through 1459 are subject to article 20.02(a) of the Code of Criminal Procedure. Section 552.101 of the Government Code also encompasses article 20.02(a), which provides that “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). Article 20.02, however, does not define “proceedings” for purposes of subsection (a). Therefore, we have reviewed case law for guidance and found that Texas courts have not often addressed the confidentiality of grand jury subpoenas under article 20.02. Nevertheless, the court in *In re Reed* addressed the issue of what constitutes “proceedings” for purposes of article 20.02(a) and stated that although the court was aware of the policy goals behind grand jury secrecy, the trial court did not err in determining the grand jury summonses at issue were not proceedings under article 20.02. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.). The court further stated that the term “proceedings” could “reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations.” *Reed*, 227 S.W.3d at 276. The court also discussed that, unlike federal law, article 20.02 does not expressly make subpoenas confidential. *See Reed*, 227 S.W.3d at 276; FED. R. CRIM. P. 6(e)(6).

⁴As our ruling is dispositive for this information, we need not address your remaining argument against the disclosure of the submitted medical records.

Subsequent to the ruling in *Reed*, the 80th Legislature, modeling federal law, added subsection (h) to article 20.02 to address grand jury subpoenas. *See* Crim. Proc. Code art. 20.02; FED. R. CRIM. P. 6(e)(6) (“Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.”). Article 20.02(h) states that “[a] subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” Crim. Proc. Code art. 20.02(h). This provision, however, does not define or explain what factors constitute “necessary to prevent the unauthorized disclosure of a matter before the grand jury.” *Id.* Because subsection (h) is modeled on federal law, we reviewed federal case law for guidance on a definition or explanation of the factors that would constitute “necessary to prevent the unauthorized disclosure of a matter before the grand jury” for the purposes of keeping grand jury subpoenas secret. Our review of federal case law revealed that federal courts have ruled inconsistently on the issue of whether or not grand jury subpoenas must be kept secret. FED. R. CRIM. P. 6(e)(6) advisory committee’s note (stating federal case law has not consistently stated whether or not subpoenas are protected by rule 6(e)). Furthermore, even if we considered article 20.02 to be a confidentiality provision, information withheld under this statute would only be secret “for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” *Id.*

You inform us that the criminal case at issue concluded with a conviction. Additionally, you have not submitted any arguments explaining how the matter upon which the submitted subpoenas were based is still “before the grand jury” to warrant keeping the subpoenas secret. Therefore, upon review of article 20.02 and related case law, it is not apparent, and you have not otherwise explained, how this provision makes the submitted grand jury subpoenas in documents 1339 and 1455 through 1459 confidential. *See* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Consequently, the submitted subpoenas in documents 1339 and 1455 through 1459 may not be withheld under article 20.02 of the Criminal Code of Procedure.

Section 552.101 also encompasses article 42.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 42.12 § 9(j). Article 42.12 of the Code of Criminal Procedure is applicable to pre-sentence investigation reports and provides in part:

(j) The judge by order may direct that any information and records that are not privileged and that are relevant to a report required by Subsection (a) or Subsection (k) of this section be released to an officer conducting a presentence investigation under Subsection (i) of this section or a postsentence report under Subsection (k) of this section. The judge may also issue a subpoena to obtain that information. A report and all information

obtained in connection with a presentence investigation or postsentence report are confidential and may be released only:

- (1) to those persons and under those circumstances authorized under Subsections (d), (e), (f), (h), (k), and (l) of this section;
- (2) pursuant to Section 614.017, Health and Safety Code; or
- (3) as directed by the judge for the effective supervision of the defendant.

Crim. Proc. Code art. 42.12 § 9(j). Upon review we agree the pre-sentence investigation report contained in documents 1363 through 1369 must be withheld under section 552.101 of the Government Code in conjunction with article 42.12 of the Code of Criminal Procedure.⁵

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). This office has also found that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate or embarrassing and of no legitimate public interest. See Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note that privacy is a personal right that lapses at death, and, thus, common-law privacy is not applicable to information that relates only to a deceased individual. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976);

⁵As our ruling is dispositive with respect to this information, we need not address the remaining arguments against disclosure of this information.

Open Records Decision No. 272 (1981). Upon review, we find the information we have marked in the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note some of the remaining information at issue pertains only to deceased individuals and does not implicate the privacy interest of a living individual. Further, we find none of the remaining information at issue that pertains to living individuals is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

You claim documents 1242 through 1286 and 1344 through 1360 are subject to section 550.065(b) of the Transportation Code, which is also encompassed by section 552.101 of the Government Code and states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065 applies only to accident report forms completed pursuant to chapter 550 or section 601.004 of the Transportation Code. *See id.*; *see also id.* § 550.064 (discussing information required in accident report form). Upon review, we find documents 1242 through 1253, 1260 through 1286 and 1344 through 1360, which consist of the Department of Public Safety's ("DPS") fatality crash investigation report, vehicle inspection report, driver examination report, offense report, and other documents pertaining to DPS's investigation, were not completed pursuant to chapter 550 or section 601.004 of the Transportation Code. Therefore, this information is not subject to section 550.065 of the Transportation Code and may not be withheld under section 552.101 on that basis.

However, we find documents 1254 through 1259 consist of CR-3 crash report forms that were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See 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 of the items of information specified by the statute. *Id.* The requestor, in this instance, has provided the district attorney with two of the three specified items of information. Thus, the district attorney must generally release the accident reports, which we marked in documents 1254 through 1259, to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

You also contend, however, portions of the submitted CR-3 report forms, as well as portions of the remaining responsive information, are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't

Code § 552.130(a)(1), (2). We note section 552.130 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore*, 589 S.W.2d at 491; ORD 272 at 1. Accordingly, the district attorney may not withhold the Texas motor vehicle record information in the remaining information that pertains solely to a deceased individual under section 552.130. If, however, a living individual owns an interest in the vehicle of the deceased individual, then the district attorney must generally withhold the Texas motor vehicle record information we have marked pertaining to that vehicle under section 552.130. We note the requestor may be the legal representative of the living individual with the interest in the vehicle at issue. If so, he has a right of access to the information pertaining to his client under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by law intended to protect person's privacy interests). Upon review, we find the CR-3 report forms contain information that is generally confidential under section 552.130.

A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See Open Records Decision Nos. 623 at 3 (1994)* (exceptions in Act in applicable to information that statutes expressly make public), 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 exception to disclosure under the Act). However, because section 552.130 has its own access provisions, we conclude that 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 (1986)*.

In this instance, section 550.065(c)(4) specifically provides access only to accident reports completed pursuant to chapter 550 or section 601.004 of the Transportation Code, while section 552.130 generally excepts Texas motor vehicle record information maintained in any context. Thus, we conclude the access to accident reports provided under section 550.065(c)(4) is more specific than the general confidentiality provided under section 552.130. Accordingly, the district attorney may not withhold any portion of the accident reports under section 552.130. Therefore, the district attorney must release the submitted CR-3 accident report forms in their entirety to this requestor pursuant to section 550.065(c)(4). The district attorney must withhold the Texas motor vehicle record information pertaining to living individuals who are not represented by the requestor, which we have marked in the remaining information, and the portions of photographs and video and

audio recordings we have indicated in the submitted compact discs under section 552.130 of the Government Code.

You assert portions of the remaining information are excepted under section 552.132 of the Government Code, which provides, in relevant part, the following:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim.

Id. § 552.132(b), (d). The submitted information is held by the district attorney, not the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Additionally, you provide no representation the victim is an employee of the district attorney who elected in accordance with section 552.132(d). We, therefore, conclude the district attorney may not withhold any portion of the remaining information under section 552.132 of the Government Code.

You also assert portions of the remaining information are excepted under section 552.1325 of the Government Code, which provides as follows:

(a) In this section:

- (1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.
- (2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

- (1) the name, social security number, address, and telephone number of a crime victim; and
- (2) any other information the disclosure of which would identify or tend to identify the crime victim.

Id. § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). A portion of the information you seek to withhold consists of victim impact statements as defined by article 56.03 of the Code of Criminal Procedure that were completed by close relatives of the deceased victims. *See id.* § 56.03. The statements reflect the relatives have suffered mental harm as a result of the criminally injurious conduct that led to the victims' deaths. Thus, we find the relatives who completed the impact statements are victims for purposes of article 56.32, and are, thus, crime victims for purposes of section 552.1325. *See id.* § 56.32(a)(2)(D). The information you seek to withhold also includes identifying information of the victims contained in a document that was submitted for the purpose of preparing a victim impact statement. Section 552.1325 is intended to protect the victims' privacy. *See* House Comm. on State Affairs, Bill Analysis, Tex. S.B. 1015, 78th Leg., R.S. (2003) (provision intended to protect "best interests" of crime victims). Therefore, in most cases, the district attorney would be allowed to withhold the victim's identifying information from public disclosure. In this instance, however, the requestor is an attorney who represents the victims at issue. Thus, pursuant to section 552.023 of the Government Code, he has a right of access to the information that would ordinarily be withheld to protect these individuals' privacy. Gov't Code § 552.023(a); *see* ORD 481 at 4. Consequently, pursuant to section 552.023, the information at issue may not be withheld from this requestor under section 552.1325.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c).⁶ Gov't Code § 552.137(a)-(c). We have marked personal e-mail addresses in the remaining information that do not appear to fall within the scope of section 552.137(c). The marked e-mail addresses must be withheld under

⁶The 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).

section 552.137, unless the owner of an e-mail address has affirmatively consented to its public disclosure.

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district attorney may withhold documents 1224, 1361, 1370, 1460 through 1462, 1472, 1476 through 1477, the marked portion of 1478, 1480 through 1485, the marked portion of 1486, 1488 through 1492, 1495 through 1522, and 1524 through 1538 under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law, and the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district attorney must withhold documents 1388 through 1391 under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code, except as specified by section 773.091(g) of the Health and Safety Code. The medical records and information taken from medical records we have marked may only be released in accordance with the MPA. The district attorney must withhold documents 1363 through 1369 under section 552.101 of the Government Code in conjunction with article 42.12 section 9(j) of the Code of Criminal Procedure. The district attorney must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney must release the CR-3 accident reports in documents 1254 through 1259 to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. The district attorney must withhold the information we have marked and the portions of photographs and video and audio recordings we have indicated under section 552.130 of the Government Code; however, the district attorney may not withhold the information pertaining to the deceased individual's vehicle if no living individual owns an interest in it or if the requestor has a right of access to that information under section 552.023 of the Government Code as the legal representative of a living individual with an interest in that vehicle. The district attorney must also withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner of an e-mail address has

affirmatively consented to its public disclosure.⁷ The remaining information must be released in accordance with copyright law.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/tf

Ref: ID# 416529

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁷This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including: a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code; a Texas driver's license number, a copy of a Texas driver's license, a Texas license plate number, and the portion of a photograph that reveals a Texas license plate number under section 552.130; and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.