



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2012

Mr. Barry L. Macha
General Counsel
Midwestern State University
3410 Taft Boulevard
Wichita Falls, Texas 76308-2099

OR2012-01065

Dear Mr. Macha:

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# 443023.

The Midwestern State University Police Department (the "department") received a request for specified information pertaining to a specified motor vehicle accident. You state the department has released some of the submitted information. You claim the rest of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.114, 552.130, 552.136, and 552.147 of the Government Code. You also inform us that release of this information may implicate the interests of third parties. Accordingly, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the department's claim under section 552.114 of the Government Code. Section 552.114 excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." *Id.* § 552.114(a). This office applies the same analysis under section 552.114 and the federal Family Educational Rights and Privacy Act

¹We note this office has not received any comments from the third parties.

("FERPA"), section 1232g of title 20 of the United States Code. *See* Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 and FERPA). However, FERPA is not applicable to law enforcement records maintained by the department that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted information consists of law enforcement records prepared by the department for a law enforcement purpose. Thus, this information is not subject to FERPA, and no portion of it may be withheld on that basis. Accordingly, we also do not address your argument under section 552.114 of the Government Code. *See* ORD 539. Therefore, the department may not withhold any of the information at issue under section 552.114 of the Government Code or FERPA. However, we will consider your remaining arguments against disclosure of the submitted information.

Next, we must address the department's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). While you raised section 552.108 the Government Code within the ten-business-day time period as required by section 552.301(b), you did not raise sections 552.101, 552.130, 552.136, and 552.147 of the Government Code until after the ten-business-day deadline had passed. Consequently, we find the department failed to comply with the procedural requirements of section 552.301 with respect to its claims under sections 552.101, 552.130, 552.136, and 552.147.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its untimely claim, unless that claim is a compelling reason for withholding information from disclosure. *See generally 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, 381-82 (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); *see also generally* Open Records Decision No. 630 (1994). A compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because sections 552.101, 552.130, and 552.136 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these sections to the submitted information. We will also consider the applicability of section 552.108 of the Government Code, which you timely raised.

We next note the submitted information contains two CR-3 accident reports that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065. Section 550.065(c)(4) provides for the release of accident

reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See id.* § 550.065(c)(4). Upon review, we find the requestor has provided the department with two of the three requisite pieces of information specified by section 550.065(c)(4). Although you seek to withhold the CR-3 accident reports under sections 552.108 and 552.136 of the Government Code, a statutory right of access generally prevails over the Act's general exceptions to public disclosure. *See Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 3 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act).* Therefore, this information may not be withheld under section 552.108 or section 552.136.

You also assert portions of the CR-3 accident reports are confidential under section 552.130 of the Government Code. This section provides 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 is excepted from public release. *See Gov't Code § 552.130(a)(1)-(2).* As previously noted, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See ORD 451 at 3.* However, because section 552.130 has its own access provisions, 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.* In this instance, section 550.065 specifically provides access only to accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access to accident reports provided under section 550.065 is more specific than the general confidentiality provided under section 552.130. Accordingly, the department may not withhold any portion of the CR-3 accident reports under section 552.130. Therefore, the department must release the CR-3 accident reports, which we have marked, in their entirety under section 550.065(c)(4).

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information is related to two pending criminal investigations. We note the

remaining information includes a criminal trespass form. Because a copy of this form was provided to the arrestee listed in the remaining information, we find that release of the form will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the department may not withhold this information, which we have marked, under section 552.108(a)(1). However, based on your representation and our review, we find release of the remaining 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 conclude section 552.108(a)(1) is generally applicable to this 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). Basic information refers to the offense and arrest information held to be public in *Houston Chronicle* and includes an arrestee's social security number. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You have marked the social security number of the arrestee at issue under section 552.108(a)(1). Thus, the department may not withhold this information under section 552.108(a)(1). Accordingly, with the exception of the criminal trespass form we marked, the arrestee's social security number, and the basic offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1).²

Finally, you raise section 552.130 of the Government Code for portions of the criminal trespass form. As previously noted, section 552.130 provides 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 is excepted from public release. Gov't Code § 552.130(a)(1)-(2). The department must withhold the driver's license and license plate numbers you have marked in the criminal trespass form, as well as the additional driver's license and motor vehicle record information we have marked, under section 552.130.

In summary, the department must release the CR-3 accident reports we marked in their entirety under section 550.065(c)(4) of the Transportation Code. With the exception of the criminal trespass form we marked, the arrestee's social security number, and basic offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The department must withhold the driver's

²As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure. However, as noted above, basic information includes an arrestee's social security number. Section 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

license and license plate numbers you marked in the criminal trespass form, as well as the additional driver's licence and motor vehicle record information we marked, under section 552.130 of the Government Code. The remaining information must be released.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 443023

Enc. Submitted documents

c: Requestor
(w/o enclosures)