



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2014

Ms. Amy L. Sims
Assistant City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2014-07312

Dear Ms. Sims:

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# 521337.

The Lubbock Police Department (the "department") received a request for all police reports related to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of information.¹

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the specified incident. This

¹We assume 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.

ruling does not address the public availability of non-responsive information, and the department need not release such information in response to this request.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Moreover, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

You contend the present request for information implicates the named individual’s right to privacy because it requires the department to compile unspecified law enforcement records concerning the individual named in the request. After reviewing the request and the submitted information, however, we find the requestor is seeking specific information regarding the specified incident. Accordingly, we find this request does not require the department to compile unspecified law enforcement records. Therefore, the request does not implicate the named individual’s right to privacy, and none of the responsive information may be withheld on that basis.

Section 552.108(a) 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 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). You state the responsive information contains evidence in a pending criminal investigation. Based on this representation, we find release of the responsive 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 find section 552.108(a)(1) is applicable to the responsive 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may generally withhold the responsive information under section 552.108(a)(1).

We note the requestor is a representative of the Texas Department of State Health Services (“DSHS”). Section 773.0612 of the Health and Safety Code provides DSHS or its representative “is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code].” Health & Safety Code § 773.0612(a). Thus, the requestor may have a statutory right of access to information that is otherwise protected by section 552.108. See Open Records Decision Nos. 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 exceptions to disclosure under the Act).

As we are not able to determine if the requestor has a statutory right of access, we rule conditionally. If the individual at issue is not an emergency medical technician licensed under chapter 773 of the Health and Safety Code, or DSHS does not seek the requested information as part of an investigation DSHS is conducting pursuant to chapter 773 of the Health and Safety Code, then the requestor does not have a special right of access to the information at issue. In that event, with the exception of basic information, the department may withhold the responsive information under section 552.108(a)(1) of the Government Code.

In the event the individual whose information is at issue is an emergency medical technician licensed under chapter 773 of the Health and Safety Code, and DSHS seeks the requested information as part of an investigation DSHS is conducting pursuant to chapter 773 of the Health and Safety Code, then the requestor is authorized to obtain records and other documents that are directly related to emergency medical services personnel to the extent necessary to enforce chapter 773 of the Health and Safety Code and the rules adopted under chapter 773 of the Health and Safety Code. See Health & Safety Code § 773.0612(a). Thus, if these conditions are met, section 773.0612 of the Health and Safety Code applies to the responsive information.

In that instance, we note portions of the information at issue are subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Upon review,

we find the motor vehicle record information we have marked is subject to section 552.130 of the Government Code.

If section 773.0612 of the Health and Safety Code applies to the information at issue, there is a conflict between the requestor's right of access under section 773.0612 of the Health and Safety Code and the information that is made confidential by section 552.130 of the Government 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.). In this instance, although section 773.0612 generally allows DSHS access to information relating to emergency medical services personnel it is investigating, section 552.130 specifically protects driver's license and motor vehicle record information, and contains its own access provisions governing release of information. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 773.0612 of the Health and Safety Code. Accordingly, in the event the requestor has a statutory right of access under section 773.0612, the department must withhold the information we have marked under section 552.130 of the Government Code.²

In summary, if the individual whose information is at issue is not an emergency medical technician licensed under chapter 773 of the Health and Safety Code, or DSHS does not seek the requested information as part of an investigation DSHS is conducting pursuant to chapter 773 of the Health and Safety Code, then, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. However, if each of these conditions are met, then the department must withhold the information we have marked under section 552.130 of the Government Code, and the remaining responsive information must be released to this requestor.

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/>

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

[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 "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 521337

Enc. Submitted documents

c: Requestor
(w/o enclosures)