



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2015

Ms. Julie P. Doshier
Counsel for the City of Farmers Branch
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

OR2015-07318

Dear Ms. Doshier:

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# 561680 (Farmers Branch Ref. No. 70305).

The Farmers Branch Police Department (the "department"), which you represent, received a request for information pertaining to a specified motor vehicle accident. You state the department has released some information to the requestor. We understand the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.1175, and 552.130 of the

¹You state the department will withhold motor vehicle record information pursuant to Open Records Decision No. 684. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas driver's license numbers and Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion. *See* Open Records Decision No. 684 at 8 (2009). However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a) of the Government Code without the necessity of seeking a decision from the attorney general. *See* 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). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to subsection 552.130(a) only in accordance with section 552.130, not Open Records Decision No. 684.

Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) provides, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has provided the department with the requisite pieces of information specified by the statute.

Although you seek to withhold this information under sections 552.102, 552.103, 552.1175, and 552.130 of the Government Code, we note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* 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 exception to disclosure under the Act). Because sections 552.102, 552.103, and 552.1175 are general exceptions to disclosure under the Act, the requestor's statutory access under section 550.065 of the Transportation Code prevails, and the department may not withhold information subject to those exceptions from the CR-3 accident report. However, because section 552.130 has its own access provisions, we conclude 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 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). In this instance, section 550.065 specifically provides access to only 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 an accident report provided under section 550.065 is more specific than the general confidentiality provided under section 552.130. Consequently, the department may not withhold any portion of the submitted CR-3 accident report under section 552.130. Therefore, the department must release the submitted CR-3 accident report in its entirety to the requestor pursuant to section 550.065(c)(4) of the Transportation Code.

²Although you raise section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise for information held in a non-employment context.

Next, we note the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The remaining information consists of a completed investigation subject to section 552.022(a)(1). The department must release the information at issue pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Section 552.103 does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the remaining information may be withheld under section 552.103 of the Government Code. However, because information that is subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider your argument for that exception. Additionally, because sections 552.101, 552.102, and 552.130 of the Government Code make information confidential under the Act, we will also consider those exceptions.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). The information at issue contains an administrative investigation of a department officer. However, you state the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to some of the information at issue. However, the remaining information at issue reflects it was generated as part of an internal investigation conducted by the

department that was purely administrative in nature. Therefore, we find the department has failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information. Accordingly, the department may not withhold any of the remaining information, which we have marked for release, under section 552.108(a)(2) of the Government Code. Thus, with the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.108(a)(2).³

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 Code § 552.101. Section 552.101 of the Government Code encompasses section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a), (b). Upon review, we find the information we have marked was acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, the department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. Upon review, we find the department must withhold the remaining motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the department must release the submitted CR-3 accident report in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The department must withhold the polygraph information we have marked under section 552.101 of the

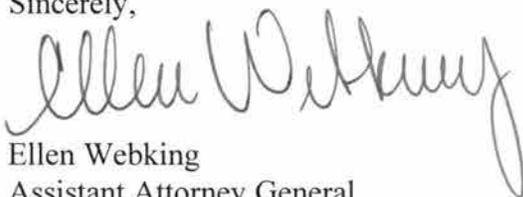
³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The department must release the remaining information.

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/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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 561680

Enc. Submitted documents

c: Requestor
(w/o enclosures)