



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2015

Mr. Ryan D. Pittman
Abernathy, Roeder, Boyd & Hullett, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2015-08549

Dear Mr. Pittman:

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# 560428.

The City of Frisco (the "city"), which you represent, received a request for information pertaining to a specified motor vehicle collision and the requestor's client. You state the city will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-01555 (2012). In Open Records Letter No. 2012-01555, we determined the department must release the submitted CR-3 accident report pursuant to section 550.065(c)(4) of the Transportation Code. The ruling also determined, except for the information specified in section 773.091(g) of the Health and Safety Code, the department must withhold the marked emergency medical services ("EMS") records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, unless the department received proper consent for release in accordance with chapter 773 of the Health and Safety Code. Finally, the ruling determined the department may withhold the remaining information under section 552.103 of the Government Code.

However, both the facts and the law on which Open Records Letter No. 2012-01555 was based have changed. First, you inform us the city is no longer a party to the pending litigation which was the basis of the section 552.103 claim. Second, the Third Court of Appeals of Texas has issued two opinions affecting our construction of the law on which the ruling was based, section 550.065 of the Transportation Code and section 773.091(b) of the Health and Safety Code. *See City of San Antonio v. Abbott*, 432 S.W.3d 429 (Tex. App.—Austin 2014, pet. denied) (construing scope of section 550.065 to render more than actual accident reports confidential); *Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (construing similar provision in Medical Practice Act, Occupations Code section 159.002; holding patient does not have general right of access to his or her medical records from governmental body responding to request for information under Act). Accordingly, the city may not rely on Open Records Letter No. 2012-01555 as a previous determination and may not withhold or release any of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Section 550.065 of the Transportation Code provides information that “relates to a motor vehicle accident reported under [chapter 550]” is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. Transp. Code § 550.065(a)-(b). A governmental entity may release information related to a reported accident only in accordance with subsections (c) and (e). *Id.* § 550.065(c), (e). Section 550.065(c)(4) provides a governmental entity shall release such information 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 address or the highway or street where the accident occurred. *Id.* § 550.065(c)(4). In this case, the requestor has provided the city the information required under section 550.065(c)(4).

In *City of San Antonio v. Abbott*, the court of appeals considered the applicability of section 550.065 to certain information related to an accident. *See* 432 S.W.3d 429. The information at issue consisted of call-for-service and dispatch logs, and the requestor did not provide the requisite information pursuant to section 550.065(c)(4) to obtain the logs. The city argued the plain meaning of the phrase, “information that . . . relates to a motor vehicle accident” in section 550.065 includes *any* information pertaining to an accident reported under chapter 550, and thus, encompasses the information in its logs. Thus, the city contended the logs are confidential because the information relates to motor vehicle accidents reported under chapter 550. The court of appeals agreed with the city’s interpretation of section 550.065. The court held the phrase “relates to” is “very broad” and the Legislature’s use of the phrase “has the effect of broadening the scope of [s]ection 550.065 to render more than the actual accident reports confidential.” *Id.* at 432.

Because the court found the language in section 550.065 to be unambiguous and encompass more than the actual accident report required to be filed under chapter 550, it concluded the city's call-for-service and dispatch logs are confidential under section 550.065(b) of the Transportation Code. Relying on the court's interpretation of the broad scope of section 550.065, we construe the converse to be true when the requestor does provide the requisite information pursuant to section 550.065(c)(4). Thus, based on the court's rationale, when a person provides two of the required pieces of information to a governmental entity, it must release any information that relates to a motor vehicle accident required to be reported under chapter 550. Such a release is not limited to the accident report itself. *Id.* at 433.

After review of the submitted information, we find all of the submitted information is related to a motor vehicle accident reported under chapter 550 of the Transportation Code. Therefore, we conclude section 550.065(c) requires the city to release all of the submitted information to the requestor, and the requestor provided the requisite information.

Although the city asserts section 552.103 to withhold the information, information expressly made public by statute may not be withheld from the public under the general exceptions to public disclosure under the Act. *See, e.g.*, 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 section 552.103 is a general exception under the Act, the requestor's statutory access under section 550.065(c)(4) prevails and the city may not withhold the information under section 552.103 of the Government Code.

However, portions of the submitted information are subject to a confidentiality provision.¹ 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 encompasses information protected by other statutes, such as section 773.091 of the Health and Safety Code, which provides, in relevant 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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), EMS records are deemed confidential under section 773.091 and may be released only in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.94. Upon review, we find some of the submitted information constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, section 773.091 is applicable to the records we have marked. Therefore, we must address the conflict between the access provided under section 550.065 of the Transportation Code and the confidentiality provided under section 773.091(b) of the Health and Safety Code.

As noted above, where general and specific statutes 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 the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *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). While section 550.065 of the Transportation Code applies to any information relating to an accident reported under chapter 550, section 773.091 of the Health and Safety Code specifically protects EMS records. Therefore, we find the confidentiality provision of section 773.091 is more specific than the access provision of section 550.065(c). Although section 550.065 was enacted in a later legislative session than section 773.091, we find no evidence the legislature intended the general provision to prevail.² Thus, except for the information subject to section 773.091(g), the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

In summary, except for the information subject to section 773.091(g), the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The remaining submitted information must be released to the requestor pursuant to section 550.065(c)(4) of the Transportation 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.

²*See* Act of May 12, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Gen. Laws 1025, 1095 (enacting section 550.065); Act of June 15, 1991, 72nd Leg., R.S., ch. 605, § 8, 1991 Tex. Gen. Laws 2199, 2203 (enacting section 773.091).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 560428

Enc. Submitted documents

c: Requestor
(w/o enclosures)