



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2015

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2015-09617

Dear Ms. White:

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# 563969.

The Town of Flower Mound (the "town"), which you represent, received two requests from different requestors for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 subject to chapter 550 of the Transportation Code. Section 550.065 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). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). 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 *City of San Antonio v. Abbott*, the court of appeals considered the applicability of section 550.065 to certain information related to an accident. 432 S.W.3d 429 (Tex. App.—Austin 2014, pet. denied). 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.

Here, the requested information relates to a motor vehicle accident required to be reported under chapter 550 because it resulted in injury to or the death of a person or damage to the property of a person to the apparent extent of \$1,000 or more, and the requestors have provided the town with the requisite information. The town asserts some of the submitted information is subject to section 552.101 of the Government Code in conjunction with common-law privacy and subject to section 552.147 of the Government Code, as a general rule. However, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *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 exceptions to disclosure under the Act). Further, when a statute directly conflicts with a common-law principle or claim, the statutory provision controls and preempts common-law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common-law only when the statute directly conflicts with common law principle);

CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd., 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the town may not withhold the information under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.147 of the Government Code.

We note, however, the information being released contains information subject to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code, and section 552.130 of the Government Code. Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note, however, records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the information we have marked consists of CHRI that is confidential pursuant to section 411.083 of the Government Code. However, we find the town has failed to demonstrate how the remaining information consists of confidential CHRI. Therefore, the town may not withhold any portion of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of all information maintained by DPS concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

- (a) The [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any

individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address.' Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a), (b). Upon review, we find the information we have marked is subject to section 411.192. In this instance, the requestor is neither a criminal justice agency nor the license holder whose information is at issue. Therefore, the information we have marked is confidential pursuant to section 411.192 of the Government Code. However, we find the town has failed to demonstrate any of the remaining information is subject to section 411.192. Thus, the town may not withhold any of the remaining information under section 552.101 on that basis.

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 personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Although, as previously stated, a specific statutory right of access prevails over general exceptions to disclosure under the Act, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, the motor vehicle record information in the remaining information is confidential under section 552.130 of the Government Code.

Because some of the submitted information is specifically protected from public disclosure by section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code, and section 552.130 of the Government Code, we find there is a conflict between these provisions and the access provided under section 550.065(c)(4) of the Transportation Code. 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); *see also 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.). Section 550.065 governs the release of all information relating to a motor vehicle accident reported under chapter 550, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access provided under section 550.065(c)(4) is more specific

than the general confidentiality provided under section 552.130. *Cf.* Transp. Code § 550.065(e)-(f). Accordingly, the town may not withhold the information under section 552.130. However, section 411.083 of the Government Code specifically protects CHRI, and section 411.192 of the Government Code specifically protects concealed handgun license information. Thus, we find the confidentiality provided by sections 411.083 and 411.192 of the Government Code prevail over the statutory access under section 550.065(c)(4) of the Transportation Code. Accordingly, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 411.083 and 411.192 of the Government Code.

In summary, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 411.083 and 411.192 of the Government Code. The town 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 563969

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)