



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 18, 2015

Mr. James Kopp  
Assistant City Attorney  
Office of the City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2015-17097

Dear Mr. Kopp:

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# 575760 (COSA File No. W082883).

The City of San Antonio (the "city") received a request for a specified police report. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception the city claims and reviewed the submitted information.

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.

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<sup>1</sup>We note the city did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b), (e). Nevertheless, because the exception the city claims can provide a compelling reason to overcome the presumption of openness, we will consider the city's claimed exception for the submitted information. See *id.* §§ 552.007, .302, .352.

In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the city seeks to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, the city has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. However, upon review, we find some of the submitted information, which we have marked, identifies a sexual assault victim, and therefore satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate any of the remaining information is highly intimate or embarrassing information pertaining to an identified individual. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

We note the remaining information contains information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or 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.<sup>2</sup> Gov't Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

We note the requestor in this instance is a representative of the Texas Department of Aging and Disability Services ("DADS"). Under chapter 48 of the Human Resources Code, DADS's duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly or disabled person. *See* Hum. Res. Code §§ 48.007, .151, .152. Section 48.154 of the Human Resources Code provides in pertinent part:

(a) The [Texas Department of Family and Protective Services ("DFPS")] or state agency, as appropriate, shall have access to any records or documents, including client-identifying information and medical and psychological records, necessary to the performance of the [DFPS]'s or state agency's

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person or agency that has a record or document that the [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the [DFPS] or agency that requested the record or document.

*Id.* § 48.154. Thus, to the extent DADS is seeking the information to perform its duties under chapter 48, DADS has a right of access to the submitted information. A statutory right of access generally prevails over the 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 statute directly conflicts with common law principle); *see also CenterPoint Energy Houston Elec. L.L.C. 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, to the extent DADS is seeking the submitted information to perform its duties under chapter 48 of the Human Resources Code, the city may not withhold any of the information under section 552.101 in conjunction with common-law privacy.

We note a specific statutory right of access prevails over general exceptions to disclosure under the Act. Open Record Decision No. 451 at 4 (1986) (specific statutory right of access provisions generally prevail over the common law). However, because section 552.130 of the Government Code has its own access provision, section 552.130 is not a general exception to disclosure under the Act. *See Gov't Code* § 552.130(b); *see also* Attorney General Opinions GA-0055 at 3-4 (2003) (where statute specifically authorizes release of information under certain circumstances or to particular entities, that information may only be released or transferred in accordance therewith), DM-353 at 4-5 n.6 (1995) (detailed provisions in state law for disclosure of records would not permit disclosure “to other governmental entities and officials . . . without violating the record’s confidentiality”), JM-590 at 5 (1986) (“express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others”).

In this instance, the release provision of section 552.130 does not permit access to the submitted motor vehicle record information. Thus, there is a statutory conflict between the right of access granted by section 48.154 of the Human Resources Code and the exception to disclosure found in section 552.130 of the Government Code. Where information falls within both general and specific statutory provisions, the specific provision prevails over the general provision, unless the general provision was enacted later and there is clear evidence that the legislature intended for the general provision to prevail. *See Gov't Code* § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *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 No. 583 at 2 (1990) (specific statute stands as an exception or qualification to the more general). Although section 48.154 generally provides DADS representatives with access to any information

necessary to perform their duties under chapter 48 of the Human Resources Code, section 552.130 of the Government Code is specifically applicable only to motor vehicle record information. Thus, section 552.130 is more specific than the general right of access under section 48.154. Moreover, the statutory predecessor to section 48.154, section 48.0835 of the Human Resources Code, was enacted prior to section 552.130 of the Government Code. *See* Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting Gov't Code § 552.130); Act of May 24, 1993, 73d Leg., R.S., ch. 651, § 1, 1993 Tex. Gen. Laws 2436 (enacting Hum. Res. Code § 48.0835). Therefore, notwithstanding the provisions of section 48.154 of the Human Resources Code, the motor vehicle record information we have marked must be withheld from the requestor under section 552.130 of the Government Code.

In summary, the city must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, to the extent DADS is seeking the information to perform its duties under chapter 48, the city must release this information pursuant to section 48.154 of the Human Resources Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must release the remaining information.<sup>3</sup>

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](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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>We note the information being released contains a 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 a decision from this office. *See* Gov't Code § 552.147(b).

DLW/bhf

Ref: ID# 575760

Enc. Submitted documents

c: Requestor  
(w/o enclosures)