



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2015

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2015-22642

Dear Mr. Gates:

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# 584909 (Midland ID# 17395).

The Midland Police Department (the "department") received a request for any information from a specified time period, including a specified report, pertaining to a named individual. You state you have release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

In this instance, the requestor is with the Texas Department of Family and Protective Services ("DFPS"). Under chapter 48 of the Human Resources Code, DFPS's duties include the investigation of abuse, neglect, or exploitation in the provision of services to an elderly or person with a disability. *See* Hum. Res. Code § 48.154(a); Act of March 30, 2015, 84th Leg., R.S., ch. 1, § 4.268, 2015 Tex. Sess. Law Serv. 1, 794-795 (Vernon) (to be codified as an amendment to Hum. Res. Code § 48.154(a)). Section 48.154(a) of the Human Resources Code provides as follows:

[DFPS] or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance

of [DFPS]'s or state agency's 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 person or person with a disability. A person, agency, or institution that has a record or document that [DFPS] or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to [DFPS] or state agency that requested the record or document.

Act of March 30, 2015, 84th Leg., R.S., ch. 1, § 4.268, 2015 Tex. Sess. Law Serv. 1, 794-795 (Vernon) (to be codified as an amendment to Hum. Res. Code § 48.154(a)). You acknowledge DFPS is in need of this information in order to perform its duties under chapter 48 of the Human Resources Code, which include investigation of abuse, neglect, or exploitation of a person with a disability. Hum. Res. Code § 48.151(a); Act of March 30, 2015, 84th Leg., R.S., ch. 1, § 4.268, 2015 Tex. Sess. Law Serv. 1, 794-795 (Vernon) (to be codified as an amendment to Hum. Res. Code § 48.154(a)). Thus, the requestor has a right of access to the information pursuant to section 48.154. Although you raise section 552.101 of the Government Code in conjunction with common-law privacy, we note a statutory right of access generally prevails over the common law.¹ *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. 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 department may not withhold the information at issue from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996).

You state the department is part of an emergency communication district subject to section 772.318 of the Health and Safety Code. You state the telephone number at issue consists of an originating telephone number furnished by a 9-1-1 service supplier.

¹Section 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 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).

Accordingly, the department must withhold the originating telephone number furnished by a 9-1-1 service supplier, which you have indicated, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety 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 personal identification document issued by an agency of this state or another state or country is excepted from public release.² See Gov't Code § 552.130(a). Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

However, as noted above, section 48.154 of the Human Resources Code provides the requestor with a right of access to the submitted information. A statutory right of access generally prevails over the Act's general exceptions to disclosure. See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986). We conclude, however, because section 552.130 of the Government Code has its own access provision, this section is not a general exception 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"). Therefore, we must address the conflict between the access provided under section 48.154 and the confidentiality provided under section 772.318 of the Health and Safety Code and 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 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 DFPS 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 and section 772.318 of the Health and Safety Code specifically applies to the originating telephone numbers and addresses of 9-1-1 callers that are furnished

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

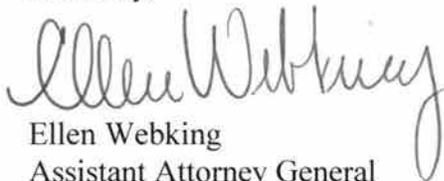
by a service supplier. Thus, we find section 552.130 of the Government Code and section 772.318 are more specific than the general right of access under section 48.154. Moreover, the statutory predecessor to section 48.154, section 48.0835 of the Human Resources Code, was enacted prior to section 552.130 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 department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code and the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code and the motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor pursuant to section 48.154 of the Human Resources Code.³

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

³Because the requestor has a special right of access under section 48.154 of the Human Resources Code, the department must request another ruling if it receives a request for this same information from another requestor. *See* Gov't Code §§ 552.301, .302.

Ref: ID# 584909

Enc. Submitted documents

c: Requestor
(w/o enclosures)