



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 13, 2016

Ms. D'Ann L. Bey
Assistant City Attorney
The Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2016-01037

Dear Ms. Bey:

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# 594258 (Police Dept. Ref. No. 23977).

The Arlington Police Department (the "department") received a request for all reports related to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal case. Based on your representation and our review, we conclude the department has demonstrated the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to the submitted information.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

However, we note the requestor identifies herself as an investigator for the Texas Medical Board (the "board"). Section 153.006 of the Occupations Code provides in part that "[t]he [board] may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant." Occ. Code § 153.006(a). In this instance, the board seeks access to criminal records pertaining to a physician. Furthermore, the board's statutory right of access to criminal records regarding a licensed physician under section 153.006 prevails over general exceptions to disclosure under the Act and common-law privacy. See *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); *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 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 Act). Accordingly, the department may not withhold the submitted information from this requestor under section 552.108 of the Government Code.

However, we note portions of the submitted information contain driver's license information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, we find the motor vehicle record information in the submitted information is confidential under section 552.130 of the Government Code.

Thus, there is a conflict between the confidentiality provided by section 552.130 of the Government Code and the right of access provided by section 153.006 of the Occupations Code. As previously noted, a statutory right of access prevails over the Act's general exceptions to disclosure. See ORD Nos. 613 at 4, 451. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. See Gov't Code § 552.130(b) (information described by section 552.130(a) may only be released in manner authorized by chapter 730 of 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 *id.* § 311.026(b); *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 153.006 generally provides the board access to criminal record reports regarding a license holder or

license applicant. *See* Occ. Code § 153.006(a). However, section 552.130 specifically protects motor vehicle record information. *See* Gov't Code § 552.130. Furthermore, although section 153.006 was enacted later than section 552.130, there is no evidence the legislature intended section 153.006 to prevail over section 552.130. *See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7, 31. We therefore conclude, notwithstanding section 153.006, the department must withhold the motor vehicle record information we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor pursuant to section 153.006 of the Occupations Code.¹

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 594258

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a special right of access to the information being released. *See* Occ. Code § 153.006(a). Therefore, if the department receives another request for the same information from a different requestor, the department must again seek a ruling from this office.