



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2016

Ms. Yvette Aguilar
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2016-22386

Dear Ms. Aguilar:

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# 629169 (CCPD File ARau1).

The Corpus Christi Police Department (the "department") received two requests from the same requestor for information pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions you claim 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). Although you claim the submitted information is protected by common-law privacy, we note the requestor identifies herself as an investigator for the Texas Medical Board (the "board").

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to raise that section based on your markings.

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 a licensed physician’s criminal records under section 153.006 prevails common-law privacy. *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); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the department may not withhold any information pursuant section 552.101 in conjunction with common-law privacy.

However, 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 marked driver’s license 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. A statutory right of access prevails over the Act’s general exceptions to disclosure. *See 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).* 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 driver’s license information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the driver's license information you 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.²

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 629169

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Should the department receive another request for this same information from a person who would not have a right of access to the information, the department should re-submit this information and request another decision. *See* Gov't Code §§ 552.301(a), .302.