



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2017

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar, 6th Floor 6W
Dallas, Texas 75215

OR2017-14743

Dear Ms. McClellan:

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# 664166 (Ref. No. 2017-06105).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note, and you acknowledge, the department did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the submitted information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because you inform us, and provide documentation showing, the Dallas County District Attorney's Office (the "district attorney's office") objects to the release of the

information at issue, we will consider whether the department may withhold the submitted information under section 552.108 of the Government Code on behalf of the district attorney's office.

Next, we note the requestor is a representative of the Texas Department of State Health Services (the "DSHS"). In her request, the requestor states she is seeking the requested information as part of an investigation she is conducting pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 of the Health and Safety Code provides the DSHS or its representative "is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code]." Health & Safety Code § 773.0612(a). The requestor asserts the submitted information pertains to an emergency medical technician licensed under chapter 773 of the Health and Safety Code. She also indicates the information is needed to enforce section 157.36(b) of title 25 of the Texas Administrative Code. *See* 25 T.A.C. § 157.36(b). Because the submitted information is directly related to an emergency medical technician and the requestor is conducting an investigation under chapter 773, we conclude section 773.0612 of the Health and Safety Code applies to the submitted information.

The district attorney's office asserts the submitted information is excepted under section 552.108 of the Government Code. We note statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *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 the Act). Therefore, the department may not withhold any of the submitted information from the requestor under section 552.108 of the Government Code on behalf of the district attorney's office.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to

¹The 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).

follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Upon review, we find the information we have marked consists of CHRI which the department must generally withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

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. *See id.* § 552.130. However, section 552.130 protects privacy, which is a personal right that lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) ("action for invasion of privacy can be maintained only by a living individual whose privacy is invaded" (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); Attorney General Opinions JM-229 (1984) ("the right of privacy lapses upon death"), H-917 (1976) ("We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981) ("the right of privacy is personal and lapses upon death"). Thus, section 552.130 is not applicable to the deceased individual's motor vehicle record information. Upon review, we find the motor vehicle record information we have marked, which does not pertain to the deceased individual, is generally confidential under section 552.130.

Because section 773.0612 of the Health and Safety Code authorizes the requestor to obtain the submitted information in its entirety and section 411.083 of the Government Code and section 552.130 of the Government Code except from disclosure portions of the submitted information, we find section 773.0612 of the Health and Safety Code is conflict with section 411.083 of the Government Code and section 552.130 of the Government Code. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevail); *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). Section 773.0612 gives a general right of access to all information

related to emergency medical services personnel being investigated by the DSHS, while section 411.083 of the Government Code specifically protects CHRI and section 552.130 specifically protects motor vehicle record information. In addition, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. *See* ORDs 613 at 4, 451 at 4. Therefore, we find the confidentiality provided by sections 411.083 and 552.130 is more specific than the general right of access provided by section 773.0612. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 411.083 of the Government Code and the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information pursuant to section 773.0612 of the Health and Safety 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 664166

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.