



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 7, 2017

Ms. Celeste Baltierra
Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2017-25422

Dear Ms. Baltierra:

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# 683709 (City File No. Arau3).

The Corpus Christi Police Department (the "department") received a request for records pertaining to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 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 (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate public 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"). 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 over 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, section 552.130 was enacted later than section 153.006. *See* Act of August 5, 1981, 67th Leg., 1st C.S., ch. 1, § 1, 1981 Tex. Gen. Laws 1, 7, 31 (enacting statutory predecessor to section 153.006); Act of June 20, 1997, 75th Leg., R.S., ch. 1187 § 4, 1997 Tex. Gen. Laws 4575, 4580 (enacting section 552.130). We therefore conclude, notwithstanding section 153.006, the department must withhold the driver's license information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the driver's license information we 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

¹Should 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.

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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a stylized flourish at the end.

D. Michelle Case
Attorney
Open Records Division

DMC/som

Ref: ID# 683709

Enc. Submitted documents

c: Requestor
(w/o enclosures)