



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 2, 2019

Ms. Stacie S. White  
Counsel for the Town of Flower Mound  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2019-08895

Dear Ms. White:

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# 757547.

The Town of Flower Mound (the "town") received a request for all information pertaining to two named individuals during a defined time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information..

Initially, we note the requestor is a representative of the Adult Protective Services ("APS") division of 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 person. *See* Hum. Res. Code §§ 48.151, .152. 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

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<sup>1</sup>Although you do not raise section 552.147 of the Government Code in your brief, we understand you to raise this exception based on your markings in the documents.

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 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.

*Id.* § 48.154(a). We understand APS seeks the records at issue as part of an investigation. Consequently, we conclude DFPS requires this information in order to perform its duties under chapter 48 of the Human Resources Code, which includes the investigation of abuse, neglect, or exploitation of an elderly person. *See id.* §§ 48.151, .152, .154(a). Thus, the requestor generally has a right of access to the requested information pursuant to section 48.154. Although the town asserts some of the information is confidential under common-law privacy, a statutory right of access prevails over a claim under 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); *see also 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). Further, although the town asserts sections 552.136, 552.137, and 552.147 of the Government Code to withhold portions of the information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, 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 exception to disclosure under the Act). Because sections 552.136, 552.137, and 552.147 are general exceptions under the Act, the requestor's statutory access under section 48.154 prevails and the town may not withhold the information it marked under section 552.136, section 552.137, or section 552.147 of the Government Code.

You also argue some of the submitted information is subject to section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decisions." This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the 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. Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice

agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we conclude the CHRI we marked is generally confidential under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have failed to demonstrate any of the remaining information constitutes confidential CHRI. Accordingly, the town may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

You also raise section 552.130 of the Government Code for some of the information at issue. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. *Id.* § 552.130(a)(1), (2). Accordingly, the town must generally withhold the motor vehicle record information you marked, the additional information we marked, and all visible license plates in the remaining information under section 552.130 of the Government Code.

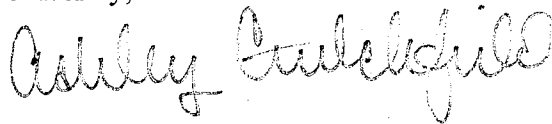
However, as previously noted, the requestor has a statutory right of access to the submitted information pursuant to section 48.154 of the Human Resources Code. As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451 at 4. We conclude, however, because section 552.130 of the Government Code has its own access provisions, section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the access provided under section 48.154 and the confidentiality provisions found in sections 411.083 and 552.130 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless general provision is later enactment and manifest intent is that general provision prevails); *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). While section 48.154 generally requires release of information found in records involving a DFPS report of abuse, neglect, or exploitation of an elderly person, section 411.083 specifically makes CHRI generated by TCIC or NCIC confidential and section 552.130 specifically protects motor vehicle record information. *See* Gov't Code §§ 411.083(a), 552.130; Hum. Res. Code § 48.154. Thus, the confidentiality provisions found in sections 411.083 and 552.130 of the Government Code prevail over the more general statutory right of access granted to the requestor by section 48.154 of the Human Resources Code. Consequently, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and the motor vehicle record information you marked, the additional information we marked, and all visible license plates in the remaining information under section 552.130 of the Government Code.

In summary, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The town must withhold the motor vehicle record information you marked, the additional information we marked, and all visible license plates in the remaining information. The town must release the remaining information.<sup>2</sup>

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](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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/mo

Ref: ID# 757547

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the town receives another request for this information from a different requestor, the town must again seek a ruling from this office.