



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2020

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

OR2020-03260

Dear Ms. Kreh:

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# 809760.

The Flower Mound Police Department (the "department"), which you represent, received a request for information involving a named individual, including information related to a specified incident. The department states it will withhold information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).<sup>1</sup> 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.

We note the requestor is an investigator for the Texas Medical Board (the "board"). Section 153.006(a) of the Occupations Code provides the 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 its request for information, the board

---

<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of seeking a decision from this office.

represents it is seeking information regarding a license holder. *See id.* Therefore, the board has a right of access to the submitted information under section 153.006 of the Occupations Code. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). A statutory right of access prevails over the Act's general exceptions to public disclosure, including sections 552.108, 552.137, and 552.147 of the Government Code, and 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); Open Records Decision Nos. 613 at 4 (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); *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). Therefore, the department must generally release the submitted information pursuant to section 153.006 of the Occupations Code.

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. 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 Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we find the FBI number you have marked consists of CHRI that is generally confidential under section 411.083 of the Government Code.

However, we note section 411.099 of the Government Code specifically grants the board a right of access to CHRI from DPS. Section 411.099 provides as follows:

The [board] is entitled to obtain from the [DPS CHRI] maintained by the [DPS] that relates to a person who is:

- (1) an applicant for a license under Subtitle B, Title 3, Occupations Code; or
- (2) the holder of a license under that subtitle.

Gov't Code § 411.099.<sup>2</sup> Likewise, under section 411.087 of the Government Code, an agency that is entitled to obtain CHRI from the DPS is also authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency[.]” *Id.* § 411.087(a)(2). CHRI consists of “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).

In this instance, the board seeks access to information relating to a license holder. We conclude that, when read together, section 153.006 of the Occupations Code and sections 411.087 and 411.099 of the Government Code grant the board a statutory right of access to the FBI number you have marked. *See also id.*; *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Therefore, the department must release the FBI number you have marked to the board. *See* ORD No. 451.

As noted above, you state you will withhold information pursuant to section 552.130(c) of the Government Code. Section 552.130 of the Government Code 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. Gov't Code § 552.130(a)(1), (2). Accordingly, the motor vehicle record information you have marked is confidential 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 153.006 of the Occupations 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 153.006 of the Occupations Code and the confidentiality provision found in section 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). Although section 153.006 provides the board access to criminal record reports regarding a license holder or license applicant, section 552.130 specifically protects motor vehicle record information. *See* Occ. Code 153.006(a); Gov't Code § 552.130. Thus, the confidentiality provision found in section 552.130 of the Government Code prevails over the more general statutory right of access granted to the requestor by section 153.006 of the Occupations Code. Consequently, the

---

<sup>2</sup> We note that section 411.099 refers to “[t]he Texas State Board of Medical Examiners.” Section 152.001 of the Occupations Code provides in part that “[a] reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.” Occ. Code § 152.001(b).

department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The department must release the remaining information to this requestor in accordance with section 153.006 of the Occupations Code and sections 411.087 and 411.099 of the Government Code.<sup>3</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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/mo

Ref: ID# 809760

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup> Because 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.