



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2022

Mr. Girraud Stephens
Counsel for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-21496

Dear Mr. Stephens:

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# 961829.

The Flower Mound Police Department (the "department"), which you represent, received a request for information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your contention that article 15.26 of the Code of Criminal Procedure does not make the submitted arrest warrant and probable cause affidavit expressly public. Article 15.26 of the Code of Criminal Procedure Provides, in relevant part, the following:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

Crim Proc. Code art. 15.26. Thus, we interpret article 15.26 of the Code of Criminal Procedure to apply only to court clerks. Therefore, we find that article 15.26 does not make the arrest warrant and probable cause affidavit maintained by the department expressly public. Accordingly, we will address your arguments against disclosure of the submitted information.

Next, we note the requestor is a representative of the Texas Department of State Health Services (“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 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. A statutory right of access prevails over the Act’s general exceptions to public 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 exception to disclosure under the Act). In addition, 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 pre-empts common law only when statute directly conflicts with common-law principle); *see also Center Point 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 may not withhold any of the submitted information from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.108 of the Government Code, section 552.136 of the Government Code, section 552.137 of the Government Code, or 552.147 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 decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by federal law. The submitted information contains information that was reported to the National Trace Center of the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (the “ATF”). Public Law number 112-55 states, in pertinent part,

[D]uring the current fiscal year and in each fiscal year thereafter, no funds appropriated under [the Consolidated and Further Continuing Appropriations Act, 2012] or any other [a]ct may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the [ATF] or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor . . . unless such disclosure of such data to an[] . . . entit[y] described in (1) . . . of this proviso would compromise the

identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1) . . . shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State[.]

Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011). We note the submitted information contains a Firearms Trace Summary containing content from the Firearms Trace System database maintained by the National Trace Center of the ATF. Upon review, we find the submitted Firearm Trace Summary is confidential under Public Law number 112-55 and the department must generally withhold this information under section 552.101 of the Government Code. *See Miller v. U.S. Dep't of Justice*, 562 F. Supp. 2d 82, 111 (D.D.C. 2008) (holding Firearms Trace Report properly withheld under Freedom of Information Act exemption 3, which covers records that are exempt from disclosure by statute).

Thus, there is a conflict between the requestor's right of access under section 773.0612 of the Health and Safety Code and the confidentiality provision of Public Law number 112-55. As federal law, Public Law number 112-55 preempts any conflicting state provisions, including section 773.0612 of the Health and Safety Code. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Therefore, the department must withhold the Firearms Trace Summary we have marked under section 552.101 of the Government Code in conjunction with Public Law number 112-55.

Section 552.101 of the Government Code also encompasses information protected by 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." Gov't Code § 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 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. Upon review, we find the FBI number you 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. Accordingly, we find the motor vehicle record information you marked and the additional information we marked are generally confidential under section 552.130 of the Government Code.

Because section 773.0612 of the Health and Safety Code authorizes the requestor to obtain the submitted information in its entirety and sections 411.083 and 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 in conflict with sections 411.083 and 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 id.* § 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 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). Section 773.0612 gives a general right of access to all information related to emergency medical services personnel being investigated by DSHS, while section 441.083 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 FBI number you 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 and the additional information we marked under section 552.130 of the Government Code.

In summary, the department must withhold the Firearms Trace Summary we have marked under section 552.101 of the Government Code in conjunction with Public Law number 112-55. The department must withhold the FBI number you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the motor vehicle record information you marked and the additional information we 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.

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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/jxd

Ref: ID# 961829

Enc. Submitted documents

c: Requestor
(w/o enclosures)