



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 14, 2017

Ms. Alexis G. Allen  
Counsel for the City of Red Oak  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2017-15818

Dear Ms. Allen:

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# 667066 (File Reference #86134).

The Red Oak Police Department (the "department"), which you represent, received a request for specified information related to a specified incident. You state you will release some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a CR-3 accident report. 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 subject to chapter 550 of the Transportation Code. Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. Transp. Code §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a

governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

Here, the requestor is a person listed under section 550.065(c). Although the department raises section 552.101 in conjunction with common-law privacy, we note a specific statutory right of access overcomes the common law. *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). The department also asserts portions of the CR-3 accident report are confidential under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or county. *See Gov't Code* § 552.130(a)(1)-(2). As noted above, a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See Attorney General Opinion DM-146* at 3 (1992); *see also ORD* Nos. 613 at 4, 451. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the access provided under section 550.065(c) of the Transportation Code and the confidentiality provided under section 552.130. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *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); *Open Records Decision* Nos. 598 (1991), 583 (1990), 451. As mentioned above, section 550.065(c) specifically provides access only to accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access to an accident report provided under section 550.065(c) is more specific than the general confidentiality provided under section 552.130. Therefore, the department may not withhold any portion of the CR-3 accident report under section 552.130. Accordingly, the department must release the CR-3 accident report in its entirety pursuant to section 550.065(c).

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 Gov't Code* § 552.130(a). We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to the motor vehicle record information of the requestor's client pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); *Open Records Decision* No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Upon review, we find the submitted documents and video recordings contain motor vehicle

information pertaining to other individuals. You state the department does not have the technological capability to redact the motor vehicle record information from the submitted video recordings. Accordingly, the department must withhold the submitted video recordings in their entirety and the information we marked under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). However, we note the requestor has a right of access to her client's birth date. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, the department must withhold the remaining public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

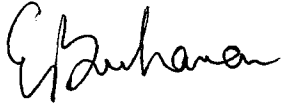
In summary, the department must withhold the submitted video recordings in their entirety and the information we marked under section 552.130 of the Government Code. The department must withhold the date of birth of the public citizen who is not the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.

Finally, you ask this office to issue previous determinations permitting the department to withhold video recordings depicting license plates, provided the requestor does not have a special right of access, in their entirety under section 552.130 of the Government Code and to withhold dates of birth belonging to members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision under section 552.301 of the Government Code. Gov't Code § 552.301 (a) (allowing a governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such previous determinations at this time. Accordingly, 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,

A handwritten signature in black ink, appearing to read "Emily Buchanan". The signature is written in a cursive style with a large initial "E".

Emily Buchanan  
Attorney  
Open Records Division

EB/eb

Ref: ID# 667066

Enc. Submitted documents

c: Requestor  
(w/o enclosures)