



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 14, 2017

Mr. Adam Anderson
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2017-18467

Dear Mr. Anderson:

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# 670925 (ORR# 17PIA264).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim some of 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.

Some of the submitted information is subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). 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. *Id.* §§ 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 may 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).

The submitted information includes a CR-3 accident report form. Here, the requestor is a person listed under section 550.065(c). The sheriff's office seeks to withhold dates of birth of public citizens in the CR-3 accident report under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note a statutory right of access prevails over the common law. See *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); *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). Thus, no portion of the CR-3 accident report may be withheld under section 552.101 of the Government Code on the basis of common-law privacy. Accordingly, the sheriff's office must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation 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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision No. 600 (1992) (personal financial information includes choice of particular insurance carrier). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *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.). We note the requestor has a right of access to her client's private information under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at (4) (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the submitted video recording contains a public citizen's date of birth that is subject to section 552.101. You inform us the sheriff's office lacks the technological capability to redact the information from the video recording. Based on this representation, we agree the sheriff's office must withhold the submitted video recording in its entirety under section 552.101 of the Government Code.

We further note the submitted audio recording contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. The separate audio recording is not intertwined with a video recording. As previously noted, you state the sheriff's office does not have the technological capability to redact information from the

submitted recordings. However, because the sheriff's office had the capability to copy the separate audio recording in order to submit the requested information for our review, we believe the sheriff's office has the capacity to produce a copy of only the non-confidential portions of the audio recording. Therefore, the sheriff's office may not withhold the separate audio recording in its entirety. Nevertheless, the sheriff's office must withhold the information we have indicated in the audio recording under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff's office must release the submitted CR-3 accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. The sheriff's office must withhold the submitted video recording, as well as the information we have indicated in the audio recording, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining portion of the audio recording.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/sdk

Ref: ID# 670925

Enc. Submitted documents

c: Requestor
(w/o enclosures)