



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2017

Mr. Ricardo Vela, Jr.
Assistant District Attorney
Dallas County District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2017-18796

Dear Mr. Vela:

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# 672413.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, and 552.147 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). Transp. Code § 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). You assert sections 552.103 and 552.108 to withhold the information at issue. We note 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 552.103 and 552.108 are general exceptions under the Act, the requestor's statutory access under section 550.065(c) prevails, and the district attorney's office may not withhold the information under section 552.103 or section 552.108 of the Government Code. You also raise section 552.101 of the Government Code in conjunction with common-law privacy for the information at issue. However, 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). Accordingly, the accident report may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You also argue some of this information is subject to 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 country. *See* Gov't Code § 552.130(a)(1)-(2). As noted above a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.*, ORDs 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 confidentiality provided under section 552.130 of the Government Code and the right of access provided under section 550.065(c) of the Transportation Code. 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 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). 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 accident reports provided under section 550.065(c) is more specific than the general confidentiality provided under section 552.130.

Accordingly, the district attorney's office may not withhold the motor vehicle record information at issue under section 552.130.

Next, we note the remaining information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The district attorney's office seeks to withhold the information at issue under sections 552.103 and 552.108 of the Government Code. However, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not withhold the court-filed documents under sections 552.103 or 552.108. Furthermore, although you raise section 552.101 of the Government Code in conjunction with common-law privacy for these documents, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Therefore, the district attorney's office may not withhold the information subject to section 552.022 under section 552.101 of the Government Code in conjunction with common-law privacy. However, we will address the district attorney's office's arguments against disclosure of the remaining information.

Section 552.108 of the Government Code provides, in pertinent part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Id. § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for

a district attorney's "entire litigation file" was "too broad" and held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380 (internal quotations omitted) (quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993)).

The present request seeks the district attorney's office's file for a specified case. You assert the instant request is for the district attorney's office's entire prosecution file for the specified case. You argue that the release of the prosecution file would reveal the prosecutor's mental impressions or legal reasoning. Based on your representations and our review, we conclude section 552.108(a)(4) of the Government Code is applicable to the remaining information.

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to basic "front-page" information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.¹

In summary, the district attorney's office must release the submitted accident report pursuant to section 550.065(c) of the Transportation Code. The district attorney's office must release the submitted court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code.

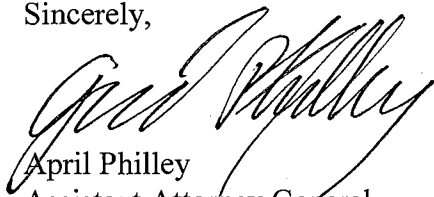
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure, except to note that basic information may generally not be withheld from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991).

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 "April Philley". The signature is fluid and cursive, with the first name being more prominent.

April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 672413

Enc. Submitted documents

c: Requestor
(w/o enclosures)