



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2017

Ms. Lisa Ruiz
Paralegal
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2017-21230

Dear Ms. Ruiz:

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# 673765 (ORR C004280-060817).

The City of Dallas (the "city") received a request for information pertaining to a specified claim file pertaining to a specified motor vehicle accident.¹ The city states it will release some information with redactions made pursuant to Open Records Letter Ruling No. 2017-09757 (2017).² The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.152 of the

¹The city states it sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Open Records Letter No. 2017-09757 authorizes the city to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

Government Code.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

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. 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 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).

In this instance, the requestor is a person listed under section 550.065(c). Although the city asserts sections 552.136 and 552.152 to withhold portions of the information, 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 552.136 and 552.152 are general exceptions under the Act, the requestor’s statutory access under section 550.065(c) prevails, and the city may not withhold the information under section 552.136 or 552.152 of the Government Code. Additionally, although the city raises section 552.101 of the Government Code in conjunction with common-law privacy, we note a statutory right of access prevails over 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). Additionally, the city asserts section 552.130 of the Government Code for the motor vehicle record information contained in the accident report. As noted above, a statutory right of access generally prevails over the Act’s general exceptions to disclosure. *See* ORDs 613 at 4, 451. However, because section 552.130 has its own access provisions,

³Although the city raises section 552.1175 of the Government Code, we note section 552.117 is the correct exception to raise for information the city holds in its capacity as an employer.

⁴We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 for the accident report. 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); Open Records Decision Nos. 598 (1991), 583 (1990), 451. 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 report provided under section 550.065(c) is more specific than the general confidentiality provided under section 552.130. Accordingly, the city may not withhold the information at issue under section 552.130. Thus, the city must release the submitted accident report to this requestor pursuant to section 550.065(c) of the Transportation Code.

Section 552.101 of the Government Code also 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 found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision No. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefit programs, among others, protected under common-law privacy.) Upon review, the information the city has marked satisfies the standard articulated in *Industrial Foundation*. Accordingly, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]”⁵ Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts*

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

v. Attorney Gen. of Tex., 354 S.W.3d 336 (Tex. 2010). Upon review, the city must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information it has marked under section 552.117(a)(2) of the Government Code.⁶

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, the city must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.⁷

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *See id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. The city informs us the employee identification numbers the city has marked are used in conjunction with one additional digit to access city credit union bank accounts. Accordingly, the city must withhold the employee identification numbers and insurance policy numbers it has marked in the remaining information under section 552.136 of the Government Code.⁸

Section 552.152 of the Government Code provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

⁶As our ruling is dispositive, we need not address the city's remaining argument against disclosure of this information.

⁷As our ruling is dispositive, we need not address the city's remaining argument against disclosure of this information.

⁸As our ruling is dispositive, we need not address the city's remaining arguments against disclosure of this information.

Id. § 552.152. The city asserts the release of the remaining information it has marked would subject city police department officers to a substantial threat of physical harm. The city states release of this information would allow others to determine officers' vulnerabilities and affect their ability to protect themselves and the public. Upon review, we find the city must withhold the information we have marked under section 552.152 of the Government Code. However, we find the remaining information at issue is not excepted from disclosure under section 552.152 of the Government Code and thus, the city may not withhold it on that basis.

In summary, the city must release the submitted CR-3 accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. The city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. The city must withhold the information it has marked under section 552.117(a)(2) of the Government Code. The city must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code. The city must withhold the employee identification numbers and insurance policy numbers it has marked in the remaining information under section 552.136 of the Government Code. The city must withhold the information we have marked under section 552.152 of the Government Code. The city must release the remaining information.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/tdw

Ref: ID# 673765

Enc. Submitted documents

c: Requestor
(w/o enclosures)