



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2019

Mr. Ryan Brooke
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2019-08385

Dear Mr. Brooke:

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# 756434 (File No. 2257).

The Lubbock Police Department (the "department") received a request for information pertaining to a specified motor vehicle accident involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 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 department officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and

(3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

We note the remaining information includes a CR-3 accident report 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).

Here, the requestor is a person listed under section 550.065(c). Although the department asserts section 552.101 of the Government Code in conjunction with common-law privacy, we note a statutory right of access prevails over the Act’s general exceptions to public disclosure. *See 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); *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.

Additionally, the department asserts section 552.130 of the Government Code for the motor vehicle record information contained in the accident report. We note a statutory right of access generally prevails over the Act’s general exceptions to 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). 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 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 the accident report provided under section 550.065(c) is more specific than the general confidentiality provided under section 552.130. Accordingly, the department may not withhold the accident report under section 552.130 of the Government Code. Therefore, the department must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code.

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 his client’s motor vehicle record information 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). Thus, the department must withhold the motor vehicle record information we marked and all visible license plates under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information is subject to section 552.130. Thus, the department may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Section 552.101 of the Government Code excepts “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. 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.). However, we note the requestor has a right of access to his client’s birth date. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Additionally, we note the names, addresses, and telephone numbers of members of the public are not excepted from public disclosure under

common-law privacy. See Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (home addresses and telephone numbers not protected under privacy). Thus, the department must withhold all public citizens' dates of birth in the remaining information, other than the date of birth of the requestor's client, under section 552.101 of the Government Code. However, we find the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the submitted body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released to this requestor in response to this request for information. The department must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. The department must withhold the motor vehicle record information we marked and all visible license plates under section 552.130 of the Government Code. The department must withhold all public citizens' dates of birth, other than the date of birth of 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.¹

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

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¹We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 756434

Enc. Submitted documents

c: Requestor
(w/o enclosures)