



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 11, 2019

Ms. Alicia Kreh  
Counsel for the Town of Flower Mound  
Taylor Olson Adkins Sralla Elam  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2019-15505

Dear Ms. Kreh:

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# 769928.

The Town of Flower Mound Police Department (the "department"), which you represent, received three requests from different requestors for information related to a specified incident.<sup>1</sup> We understand you will release some information. The department states it will redact information pursuant to section 552.147(b) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the

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<sup>1</sup>We note the first requestor modified her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

<sup>2</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information made confidential by other statutes. The submitted information contains recordings from police officers’ body worn cameras. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code provides:

(a) 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). We note the requestors provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings. We understand the submitted recordings were required to be made by law or the policies of the department and the recordings relate to a law enforcement purpose. *See id.* § 1701.661(h). We also understand the recordings are or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recordings document an incident that involves the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). The submitted recordings demonstrate they were not made in a private space for the purposes of section 1701.661(f). *See id.* §§ 1701.661(f), .651(3) (defining “private space” for purposes of section 1701.661(f)). We note, however, section 1701.661(f) provides:

A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person’s authorized representative.

*Id.* § 1701.661(f). You state the body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. You state you do not have permission for release from all of the subjects in the

recordings at issue. *See id.* Accordingly, we find the department must withhold the body worn camera recordings from the requestors under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.<sup>3</sup>

Section 552.101 of the Government Code also 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 first and second requestors are persons listed under section 550.065(c) and have a right of access to the entire accident report. However, the third requestor has not demonstrated he is a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b) with respect to the third requestor, and the department must withhold it from him under section 552.101 of the Government Code. Section 550.065(c-1) requires the department to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the third requestor has a right of access to the redacted accident report. Although the department 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 department 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 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). 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)

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 reports 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 information at issue under section 552.130. Thus, the department must release the submitted accident report to the first and second requestors pursuant to section 550.065(c) of the Transportation Code and must release the redacted accident report to the third requestor pursuant to section 550.065(c-1) 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 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 Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). 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.). We note the first and second requestors have a special right of access to their clients’ information that is otherwise protected under common-law privacy pursuant to section 552.023 of the Government Code. See Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are 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 himself). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law

privacy. However, we find no portion of the remaining information is highly intimate or embarrassing information of an individual that is of no legitimate public concern. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

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. We note section 552.130 protects personal privacy. Thus, the first and second requestors have a right of access to motor vehicle record information pertaining to the requestors' clients and this information may not be withheld from these requestors under section 552.130 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the information we indicated under section 552.130 of the Government Code.

In summary, the department must withhold the body worn camera recordings from the requestors under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must release the submitted accident report to the first and second requestors pursuant to section 550.065(c) of the Transportation Code. The department must withhold the accident report from third requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code and must release the redacted accident report to the third requestor pursuant to section 550.065(c-1) of the Transportation Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we indicated under section 552.130 of the Government Code. The department must release the remaining information.<sup>4</sup>

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

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<sup>4</sup>We note the first and second requestors have a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481. Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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 fluid and cursive, with a long horizontal stroke at the end.

Emily Buchanan  
Attorney  
Open Records Division

EB/be

Ref: ID# 769928

Enc. Submitted documents

c: 3 Requesters  
(w/o enclosures)