



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2019

Mr. Robert Carroll
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2019-30570

Dear Mr. Carroll:

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# 801474 (City ID# P001278-092519).

The City of Odessa (the "city") received a request for a specified incident report. You claim 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.

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 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).

The submitted information includes a CR-3 accident report. We are unable to determine whether the requestor represents a person or entity listed under section 550.065(c). Thus, we must rule conditionally. If the requestor does not represent a person or entity listed under section 550.065(c), then the submitted CR-3 is confidential under section 550.065(b). However, section 550.065(c-1) requires the city 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 (c)(2). *Id.* Therefore, if the requestor does not represent a person or entity listed under section 550.065(c) of the Transportation Code, then the city must withhold the submitted CR-3 under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, but must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. If the requestor represents a person or entity listed under section 550.065(c), then the city must release the submitted CR-3 pursuant to section 550.065(c) of the Transportation Code. *See id.* § 550.065(c). However, we find you have not demonstrated any portion of the remaining information consists of CR-3 reports under section 550.065 of the Transportation Code, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third 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.). If the requestor is the authorized representative of an individual involved in the accident, then the requestor has a right of access to their client's date of birth pursuant to section 552.023 of the Government Code and it may not be withheld from them under section 552.101 in conjunction with common-law privacy. *See Gov't Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request for information concerning themselves). The city must withhold the public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy; however, the city may not withhold a date of birth if it belongs to the requestor's client.

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.¹ *See Gov't Code* § 552.130. We note section 552.130 protects personal privacy. We are unable to determine whether the requestor is a legal representative of one of the individuals involved in the accident so we must rule conditionally. If the requestor is a legal representative of an individual involved in the accident, the requestor has a right of access to their client's own motor vehicle record

¹ The 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).

information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4 (1987). The city must withhold the motor vehicle information we have marked under section 552.130 of the Government Code; however, the city may not withhold the information at issue under section 552.130 if it pertains to the requestor's client.

In summary, if the requestor does not represent a person or entity listed under section 550.065(c) of the Transportation Code, the submitted CR-3 is confidential under section 550.065(b) of the Transportation Code and must be withheld under section 552.101 of the Government Code, but the city must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. If the requestor represents a person or entity listed under section 550.065(c) of the Transportation Code, the city must release the CR-3 to the requestor pursuant to 550.056(c). The city must withhold the public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy; however, the city may not withhold a date of birth if it belongs to the requestor's client. The city must withhold the motor vehicle information we have marked under section 552.130 of the Government Code; however, the city may not withhold the information at issue under section 552.130 if it pertains to the requestor's client. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 801474

Enc. Submitted documents

c: Requestor
(w/o enclosures)